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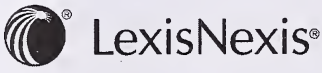

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TITLE 12

LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

(CHAPTERS 60-87 IN VOLUME 8B)

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CHAPTER.

1. GENERAL PROVISIONS.

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SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

SECTION.

12-1-101. Recidivism reporting.

12-1-101. Recidivism reporting.

(a) As used in this section, "recidivism" means a criminal act that results in the rearrest, reconviction, or return to incarceration of a person with or without a new sentence during a three-year period following the person's release from custody.

(b) An entity that makes a recidivism report under this title shall use the definition of recidivism in this section for purposes of the recidivism report.

History. Acts 2013, No. 1030, § 2.

A.C.R.C. Notes. Acts 2013, No. 1030, § 4, provided: "Temporary legislation.

"(a) The Department of Community Correction shall prepare a report on the number of persons under its supervision for the last five (5) years who would be considered recidivists under the definition provided in this act.

"(b) The report shall be completed by October 1, 2013, and copies shall be sent to the Governor and Legislative Council."

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER 6

GENERAL PROVISIONS

SUBCHAPTER.
4. Patrol Vehicles.

Subchapter 4 — Patrol Vehicles

SECTION.
12-6-402. Civilian passengers.

12-6-402. Civilian passengers.

Each law enforcement agency of the state shall establish a policy prohibiting civilian passengers in patrol vehicles unless specific written approval is given for each civilian passenger by the chief law enforcement officer or his or her designee.

History. Acts 2013, No. 1183, § 1.

CHAPTER 8

DEPARTMENT OF ARKANSAS STATE POLICE

SUBCHAPTER.
1. General Provisions.
2. Police Officers.
3. Department of Arkansas State Police Communications Equipment Leasing Act.

Subchapter 1 — General Provisions

12-8-104. Director.

(a)(1)(A) After conferring with the members of the Arkansas State Police Commission, the Governor shall appoint a Director of the Department of Arkansas State Police who shall be the executive and administrative head of the Department of Arkansas State Police and shall receive a salary as fixed by law.

(B) The Director of the Department of Arkansas State Police shall serve at the pleasure of the Governor.

(2) The Director of the Department of Arkansas State Police shall be of good moral character and a resident and a qualified elector of the State of Arkansas.

(3) In addition to all other qualifications contained in this section, the Director of the Department of Arkansas State Police, at the time of appointment to the position of Director of the Department of Arkansas State Police, shall either:

(A) Be a college graduate with at least a bachelor's degree in criminology, business administration, or a related field;

(B) Have graduated from a standard high school or vocational school and have eight (8) years' previous experience in law enforcement or a related field with considerable supervisory and administrative experience; or

(C) Have at least ten (10) years' experience in law enforcement.

(b) The Director of the Department of Arkansas State Police shall determine the number of other officers and patrol personnel to be employed by the Department of Arkansas State Police, and they shall be paid salaries according to rank, not exceeding the salaries provided.

(c) The Director of the Department of Arkansas State Police shall promulgate such rules as are necessary for the efficient operation of the Department of Arkansas State Police and for the enforcement of such duties as are prescribed in this chapter.

(d) The Director of the Department of Arkansas State Police shall keep the books and records of the Department of Arkansas State Police, which shall be audited as the books and accounts of other state departments.

(e) An annual report to the Governor and a biannual report to the General Assembly showing the activities, number of arrests, amounts collected by the Department of Arkansas State Police, and disposition of all cases shall be made by the Director of the Department of Arkansas State Police.

(f)(1) The Director of the Department of Arkansas State Police shall have supervision and control for the purpose of discipline and proper management of all the members and employees of the Department of Arkansas State Police.

(2)(A) The Director of the Department of Arkansas State Police may designate that some or all employees of the Department of Arkansas State Police be trained pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security concerning the enforcement of federal immigration laws on federal and interstate highways in the State of Arkansas.

(B) The amount spent for training employees of the Department of Arkansas State Police under the memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-118.

(3)(A) Upon request of the Director of State Highways and Transportation, the Director of the Department of Arkansas State Police may designate certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department to be trained under the terms of the memorandum of understanding described in subdivision (f)(2) of this section.

(B) The amount spent for training certified law enforcement officers from the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall be borne by the Arkansas State Highway and Transportation Department.

(g) The Director of the Department of Arkansas State Police may establish such divisions within the ranks of the Department of Arkansas State Police as he or she may deem necessary and proper.

(h) Whenever in the Director of the Department of Arkansas State Police's discretion the action is necessary for the efficient operation of the Department of Arkansas State Police, the Director of the Department of Arkansas State Police may:

(1) Transfer, assign, and reassign from one (1) division to another division any member of the Department of Arkansas State Police or other employee of the Department of Arkansas State Police; or

(2)(A) Subject to the approval of the commission, promote or demote in rank any member of the Department of Arkansas State Police.

(B) However, any demotion pursuant to subdivision (h)(2)(A) of this section shall be for nondisciplinary reasons.

(i) Due to the exacting and special duties of the Director of the Department of Arkansas State Police, he or she may draw an expense allowance in an amount not to exceed six hundred dollars ($600) per month.

(j)(1) Subject to the provisions of subsection (f) of this section, the Director of the Department of Arkansas State Police may negotiate the terms of a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United

States Department of Homeland Security concerning the enforcement of federal immigration laws.

(2)(A) The memorandum of understanding described in subdivision (j)(1) of this section must be signed on behalf of the State of Arkansas by the Director of the Department of Arkansas State Police, the Governor, and the Director of Law Enforcement Standards and Training.

(B) Prior to the signing provided for by subdivision (j)(2)(A) of this section, the memorandum of understanding shall be reviewed by the Legislative Council.

(k) The Director of the Department of Arkansas State Police shall implement or assist other entities to develop and implement a public service campaign concerning racial profiling and may utilize brochures, flyers, or public service announcements.

History. Acts 1945, No. 231, §§ 4, 14, 21; 1968 (1st Ex. Sess.), No. 65, § 1; A.S.A. 1947, §§ 42-404, 42-414, 42-421; Acts 1987, No. 1037, § 13; 1989 (1st Ex. Sess.), No. 285, § 11; 2001, No. 750, § 1; 2001, No. 1697, § 2; 2005, No. 665, § 1; 2005, No. 907, § 1; 2005, No. 2136, § 2; 2007, No. 1048, § 1; 2011, No. 779, § 1.

Amendments. The 2011 amendment substituted "promulgate such rules" for "promote such rules and regulations" in (c).

12-8-106. Department of Arkansas State Police — Duties and powers — Restrictions — Municipal police barred from patrolling certain highways.

(a)(1) It shall be the duty of the Department of Arkansas State Police to:

(A) Patrol the public highways, make arrests, and enforce the laws of this state relating to motor vehicles and the use of the state highways;

(B) Establish, maintain, and enforce a towing rotation list to assist in clearing highways of motor vehicles which have been involved in accidents or abandoned;

(C) Assist in the collection of delinquent motor vehicle license taxes and the collection of gasoline and other taxes that are required by law; and

(D) Determine when, if possible, a person or persons are the cause of injury to any state highway or other state property and arrest all persons criminally responsible for injury to any state highway or other state property and bring them before the proper officer for trial.

(2) The Director of the Department of Arkansas State Police may promulgate necessary rules and regulations to carry out the purpose and intent of subdivision (a)(1)(B) of this section.

(b) The department shall be conservators of the peace and as such shall have the powers possessed by police officers in cities and county sheriffs in counties, except that the department may exercise such powers anywhere in this state.

(c) The department shall have the authority to establish a Crimes Against Children Division, either through transfer or by contract, to

conduct child abuse investigations, to administer the Child Abuse Hotline, and, when consistent with regulations promulgated by the department, to provide training and technical assistance to local law enforcement in conducting child abuse investigations.

(d) The police officers shall have all the power and authority of the State Fire Marshal and shall assist in making investigations of arson, § 5-38-301, and such other offenses as the director may direct and shall be subject to the call of the circuit courts of the state and the Governor.

(e) However, this chapter shall not be construed so as to take away any authority of the regularly constituted peace officers in the state, but the department shall cooperate with them in the enforcement of the criminal laws of the state and assist such officers either in the enforcement of the law or apprehension of criminals.

(f) Nothing in this chapter shall be construed as to authorize any officer of the department to serve writs unless they are specifically directed to the department, or an officer thereof, by the issuing authority.

(g) No officer or member of the department shall ever be used in performing police duties on private property in connection with any strike, lockout, or other industrial disturbance.

(h)(1)(A) The following law enforcement officers are prohibited from patrolling controlled-access facilities except as may be authorized by the director:

(i) A municipal police officer;

(ii) An officer established under § 14-42-401 et seq.;

(iii) A city marshal; and

(iv) A constable.

(B) The director may withdraw any previously issued authorization to patrol controlled-access facilities.

(C)(i) The director shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to establish criteria for granting or withdrawing authorization to patrol controlled-access facilities.

(ii) In adopting the rules described in subdivision (h)(1)(C)(i) of this section, the director at a minimum shall take into consideration the following factors:

(a) Public safety;

(b) Training of the law enforcement officers;

(c) Size of the law enforcement agency;

(d) Financial impact;

(e) Abuse of police power; and

(f) The types of roadways or highways that are controlled-access facilities for purposes of this section.

(2) The following law enforcement officers may patrol any service roads that are within their jurisdiction situated adjacent to controlled-access facilities:

(A) A municipal police officer;

(B) An officer established under § 14-42-401 et seq.;

(C) A city marshal; and

(D) A constable.

(3) This subsection shall not prohibit a municipal police officer, an officer established under § 14-42-401 et seq., a city marshal, or a constable from responding to an accident or other emergency on a controlled-access facility.

History. Acts 1945, No. 231, §§ 7, 8; 1963, No. 133, § 1; A.S.A. 1947, §§ 42-407, 42-408; Acts 1987, No. 509, § 1; 1997, No. 1240, § 7; 2001, No. 254, § 1; 2001, No. 441, § 1; 2001, No. 1697, § 4; 2007, No. 371, § 1; 2011, No. 741, § 1.

Amendments. The 2011 amendment substituted "The following law enforcement officers" for "Municipal police" in the introductory paragraph of (h)(1)(A); inserted (h)(1)(A)(i) through (iv); deleted "for municipal police" following "authorization" in (h)(1)(B) and (h)(1)(C)(i); substituted "law enforcement officers" for "municipal police" in (h)(1)(C)(ii)(*b*); substituted "law enforcement agency" for "municipal police force" in (h)(1)(C)(ii)(*c*); substituted "The following law enforcement officers" for "Municipal police" in the introductory paragraph of (h)(2); inserted (h)(2)(A) through (D); and inserted "an officer established under § 14-42-401 et seq., a city marshal, or a constable" in (h)(3).

CASE NOTES

Extraterritorial Authority.

Evidence obtained in a stop of defendant's vehicle for speeding on the interstate should have been suppressed because, pursuant to subdivision (h)(2) of this section, a municipal police department did not have the authority to make a selective-traffic enforcement type of traffic stop on the interstate. McKim v. State, 2009 Ark. App. 834, — S.W.3d — (2009).

12-8-125. Small Municipality Law Enforcement Vehicle Grant Program.

(a) There is created the "Small Municipality Law Enforcement Vehicle Grant Program", to be administered by the Department of Arkansas State Police with funding from the General Improvement Fund or its successor fund or fund accounts.

(b)(1) The program may provide grants to cities of the second class as determined under § 14-37-103 or incorporated towns as determined under § 14-37-103 for the purpose of purchasing used vehicles from the Marketing and Redistribution Section of the Department of Finance and Administration.

(2) Vehicles purchased under subdivision (b)(1) of this section shall be used by law enforcement agencies of the city of the second class or incorporated town receiving the grant.

(c)(1) The Department of Arkansas State Police shall promulgate rules necessary for the implementation of the program.

(2) The rules shall include:

(A) The procedure for making an application for a grant;

(B) The selection criteria for a grant;

(C) The limitations on use of grant money; and

(D) A procedure to provide for accountability of grant recipients.

(d) A city of the second class or incorporated town shall not be required to provide matching funds to receive a grant under this section.

(e) If the Department of Arkansas State Police awards a grant to a city of the second class or incorporated town under this section, the Department of Arkansas State Police shall pay the grant funds for the purchase of a used vehicle directly to the Marketing and Redistribution Section of the Department of Finance and Administration.

(f) Funds from a grant received under this section shall not be used to pay sales tax for a used vehicle purchased from the Marketing and Redistribution Section of the Department of Finance and Administration.

(g) The awarding of grants under this section is contingent on the appropriation and availability of funding for the program.

History. Acts 2011, No. 1237, § 1.

Subchapter 2 — Police Officers

SECTION.

A.C.R.C. Notes. Acts 2013, No. 1205, § 21, provided: "FLAGS. The Department of Arkansas State Police is hereby authorized to award one (1) United States flag to the family of any Arkansas State Police Commissioned Officer killed in the line of duty. This provision will be effective for Arkansas State Police Commissioned Officers killed in the line of duty after July 1, 2011.

"The provisions of this section shall be in effect only from July 1, 2013 to June 30, 2014."

12-8-203. Probationary period.

(a)(1) Each person who is selected as a police officer of the Department of Arkansas State Police shall be a probationer for a period of eighteen (18) months from his or her date of hire.

(2) A probationer may be discharged by the Director of the Department of Arkansas State Police with the approval of the Arkansas State Police Commission with or without cause.

(b) The probationary period shall not apply to a person who has already served a probationary period.

History. Acts 1945, No. 231, § 6; 1981, No. 700, § 1; A.S.A. 1947, § 42-406; Acts 2001, No. 1697, § 11; 2003, No. 1041, § 1; 2005, No. 667, § 1; 2011, No. 14, § 1.

A.C.R.C. Notes. Acts 2011, No. 14, § 2, provided: "This act does not apply to a police officer of the Department of Arkansas State Police serving a probationary period on the effective date of this act."

Amendments. The 2011 amendment,

in (a)(1), substituted "police officer" for "member" and "eighteen (18) months" for "one (1) year."

12-8-210. Insurance — Medical and hospital.

A.C.R.C. Notes. Acts 2013, No. 1205, § 19, provided: "UNIFORM EMPLOYEE HEALTH INSURANCE PROGRAM REPORTING. The Department of Arkansas State Police shall report monthly to the Governor, the Chief Fiscal Officer of the State and to the Arkansas Legislative Council or Joint Budget Committee regarding the activity and condition for the uniformed employee health insurance plan. The report shall include, but not limited to, the beginning reserve fund balance, contributions made during the month, claims paid, and the ending fund balance of the month. In the event it is determined that the cost to adequately maintain the uniform employee health insurance plan is not feasible within the existing resources available to the department, the 89th General Assembly shall study the feasibility and desirability of discontinuing the self-insurance program and instead provide medical and hospital insurance to uniform employees through the public employees insurance program.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

12-8-215. Additional salary payments.

(a) In the event that sufficient revenues in the judgment of the Director of the Department of Arkansas State Police exist, the Department of Arkansas State Police is authorized to make additional salary payments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards and Training.

(b) It is the intent of this section that such payment shall be optional, at the discretion of the director, dependent on sufficient revenues, and shall not be implemented using funds specifically set aside for other programs within the department.

(c)(1) Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

(A) General certificate — three hundred dollars ($300) annually;

(B) Intermediate certificate — six hundred dollars ($600) annually;

(C) Advanced certificate — nine hundred dollars ($900) annually; and

(D) Senior certificate — one thousand two hundred dollars ($1,200) annually.

(2) Payment of the funds may be made monthly, quarterly, semiannually, or annually depending upon the availability of revenues and shall be restricted to the following classifications:

(A) Director of the Department of Arkansas State Police;

(B) Arkansas State Police lieutenant colonel;

(C) Arkansas State Police major;

(D) Arkansas State Police captain;

(E) Arkansas State Police lieutenant;

(F) Arkansas State Police sergeant;

(G) Arkansas State Police corporal;

(H) Arkansas State Police trooper, first class; and

(I) Arkansas State Police trooper.

(d) Payments made under this section shall be considered part of the employee's regular income and subject to all applicable withholding required by law.

History. Acts 1993, No. 508, § 15; 1995, No. 229, § 1; 2003, No. 1041, § 3; 2013, No. 143, § 1.

Amendments. The 2013 amendment deleted (c)(2)(J) and (c)(2)(K).

Subchapter 3 — Department of Arkansas State Police Communications Equipment Leasing Act

SECTION.

12-8-304. Construction — Applicability of other acts.

(a)(1) This subchapter shall be liberally construed to accomplish the intent and purposes of this subchapter and shall be the sole authority required for the accomplishment of these purposes.

(2) It shall not be necessary to comply with the general provisions of other laws dealing with public commodities and public facilities and their acquisition, construction, leasing, encumbering, or disposition if:

(A) The Arkansas State Police Commission shall comply with §§ 25-4-108 and 25-4-110 before acquiring any communications equipment authorized under this subchapter; and

(B) The commission submits any invitation or request for bids, quotes, or proposals and the procedures to be used in evaluating them to the State Procurement Director for review and written approval prior to any obligation being incurred by the commission or the Department of Arkansas State Police as the obligation relates to any acquisition authorized and defined by this subchapter.

(b) The enumeration of any object, purpose, power, manner, method, and thing in this subchapter shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(c) To the extent that there is a conflict between the provisions of this subchapter and §§ 12-8-101 — 12-8-107, 12-8-110 — 12-8-112, 12-8-114 — 12-8-116, 12-8-118, 12-8-119, 12-8-201 — 12-8-205, 12-8-213, and 12-12-103, the provisions of this subchapter shall govern.

History. Acts 1985, No. 817, §§ 7, 10; A.S.A. 1947, §§ 42-474, 42-476; Acts 2005, No. 1962, § 24; 2011, No. 779, § 2.

Amendments. The 2011 amendment substituted "§§ 25-4-108 and 25-4-110" "for §§ 25-4-107 [repealed] and 25-4-108" in (a)(2)(A).

CHAPTER 9

LAW ENFORCEMENT OFFICER TRAINING AND STANDARDS

SUBCHAPTER.

Subchapter 1 — Commission and Advisory Board on Standards and Training

SECTION.

12-9-103. Commission created — Members — Meetings — Director.

(a) The Arkansas Commission on Law Enforcement Standards and Training shall consist of ten (10) members, to be appointed by the Governor with the advice and approval of the Senate.

(b)(1)(A) Two (2) members of the commission shall be chiefs of police of municipalities in Arkansas, two (2) members of the commission shall be county sheriffs of counties in this state, one (1) member shall be an officer of the Department of Arkansas State Police, two (2) members shall be appointed to represent the public, and one (1) member shall be an educator in the field of criminal justice.

(B) Each congressional district of the state shall be represented on the commission, with the remaining members to be appointed from the state at large.

(2)(A) One (1) member shall not be actively engaged in or retired from law enforcement.

(B) The member under subdivision (b)(2)(A) of this section shall be:

(i) Sixty (60) years of age and shall represent the elderly;

(ii) Appointed from the state at large subject to confirmation by the Senate; and

(iii) A full voting member.

(3) The person who is elected as president of the Arkansas Municipal Police Association or his or her designee shall be a full voting member of the commission.

(c) Members shall be appointed for terms of seven (7) years or until their successors are appointed and qualified.

(d) If a vacancy occurs on the commission due to death, resignation, or for other reason, the vacancy shall be filled by appointment by the Governor, in the same manner as provided for the initial appointment for the position, for the remainder of the unexpired portion of the term thereof.

(e) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The commission shall meet at such times as may be provided by the rules of the commission, or upon call of the chair, or upon written request of any four (4) members.

(g) Upon recommendation of the commission, the Governor shall appoint the Director of Law Enforcement Standards and Training, who shall perform such duties as may be directed by the commission and who shall serve at the pleasure of the Governor.

History. Acts 1981, No. 45, § 7; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 42-701.1; Acts 1993, No. 109, § 1; 1997, No. 250, § 65; 2009, No. 205, § 1; 2011, No. 283, § 1.

Amendments. The 2011 amendment, in (b)(3), inserted "or his or her designee" and deleted "during his or her term of office as president of the association, and his or her successors shall likewise serve as full voting members of the commission" at the end; and deleted "Except for the president of the Arkansas Municipal Police Association" at the beginning of (c).

12-9-104. Commission's powers generally.

In addition to powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training elsewhere in this subchapter, the commission may:

(1)(A) Promulgate rules for the administration of this subchapter.

(B) The rules promulgated by the commission shall not go into full force and effect until the commission seeks the advice of the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor;

(2) Require the submission of reports and information by police departments within this state;

(3)(A)(i) Establish minimum selection and training standards for admission to employment as a law enforcement officer or as a private college or university law enforcement officer.

(ii) The minimum selection and training standards may take into account different requirements for urban and rural areas, full-time and part-time employment, and specialized police personnel.

(B) However, the minimum selection and training standards for admission to employment as a law enforcement officer shall not apply to volunteer police auxiliary officers, to volunteer officers of county

sheriffs' mounted patrols, and to honorary police officer commissions issued by appropriate police authority;

(4) Establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs of schools operated by or for the state and political subdivisions for the specific purpose of training recruits as law enforcement officers;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision of the state for the specific purpose of training law enforcement officers and recruits;

(7) Adopt rules and minimum standards for schools, including without limitation:

(A) The curriculum for:

(i) Probationary police officers, which shall be offered by all certified schools, including without limitation courses on:

(a) Accident investigation;

(b) Arrest;

(c) Civil rights;

(d) Court testimonies;

(e) Criminal law;

(f) Firearms training;

(g) First aid;

(h) Handling of juvenile offenders;

(i) Human relations;

(j) Law of criminal procedure;

(k) Law of evidence;

(l) Physical training;

(m) Race relations and sensitivity;

(n) Recognition of mental conditions that require immediate assistance and methods to safeguard and provide assistance to a person in need of mental treatment;

(o) Reports;

(p) Search and seizure;

(q) Statements;

(r) Techniques of obtaining physical evidence;

(s) Traffic control; and

(t) Vehicle and traffic law; and

(ii) Permanent police officers, including without limitation refresher and in-service training in:

(a) Any of the courses listed in subdivision (7)(A)(i) of this section;

(b) Advanced courses in any of the subjects listed in subdivision (7)(A)(i) of this section;

(c) Training for supervisory personnel; and

(d) Specialized training in subjects and fields to be selected by the board;

(B) Minimum courses of study, attendance requirements, and equipment requirements;

(C) Minimum requirements for instructors; and

(D) Minimum basic training requirements that a probationary police officer must satisfactorily complete before being eligible for permanent employment as a law enforcement officer;

(8) Make and encourage studies of any aspect of police administration;

(9) Conduct and stimulate research by public and private agencies designed to improve police administration and law enforcement;

(10) Make recommendations concerning matters within its purview pursuant to this subchapter;

(11) Make evaluations as may be necessary to determine if governmental units are complying with this subchapter;

(12) Adopt and amend bylaws, consistent with law, for the commission's internal management and control;

(13) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter;

(14) Facilitate training of certified law enforcement officers pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the Department of Homeland Security concerning the enforcement of federal immigration laws;

(15) In consultation with the Arkansas Association of Chiefs of Police, develop and implement suggested selection and training requirements and nonmandatory basic and advanced levels of certification for chiefs of police;

(16) In consultation with the Arkansas Sheriffs' Association, develop and implement suggested training requirements and nonmandatory basic and advanced levels of certification for county sheriffs;

(17)(A) Establish minimum training and certification requirements for law enforcement canine officers utilizing canines as an aid for performing searches, seizures, and other law enforcement functions.

(B) This requirement shall include certification requirements for:

(i) Officers or other persons who conduct training for law enforcement canines;

(ii) Courses for training law enforcement canines;

(iii) Minimum requirements for law enforcement canine certifying officials;

(iv) Record keeping concerning the training of law enforcement canines; and

(v) Law enforcement canines; and

(18) Adopt rules to implement §§ 14-15-309 and 19-6-819.

History. Acts 1975, No. 452, § 6; 1981, No. 427, § 4; 1983, No. 89, § 3; A.S.A. 1947, §§ 42-701.2, 42-1005; Acts 1993, No. 110, § 1; 1997, No. 179, § 8; 2005, No. 907, § 2; 2009, No. 793, § 1; 2013, No. 168, § 1; 2013, No. 227, § 1; 2013, No.

551, § 2.

Amendments. The 2013 amendment by No. 168 added (17).

The 2013 amendment by No. 227 added "or as a private college or university law enforcement officer" at the end of (3)(A)(i).

The 2013 amendment by No. 551 deleted "and regulations" following "rules" in (1)(A) and (1)(B); inserted "minimum selection and training" in (3)(A)(ii); substituted "training recruits as" for "training recruits for" in (4); rewrote the introductory language of (7) and the introductory language of (7)(A)(i); substituted "that require" for "which require" in (7)(A)(i)(n); rewrote the introductory language of (7)(A)(ii); substituted "requirements that" for "requirements which" in (7)(D); deleted "the provisions of" preceding "this subchapter" in (11); substituted "the commission's" for "its" in (12); deleted "United States" preceding "Department of Homeland Security"; and added (17).

12-9-105. Employees.

The Arkansas Commission on Law Enforcement Standards and Training may employ such employees as are necessary to efficiently and effectively carry out this subchapter and as may be authorized by appropriations of the General Assembly.

History. Acts 1975, No. 452, § 7; A.S.A. 1947, § 42-1006; Acts 2011, No. 779, § 3.

Amendments. The 2011 amendment deleted "biennial" preceding "appropriations."

12-9-106. Selection and training requirements — Exceptions.

(a)(1) The Arkansas Commission on Law Enforcement Standards and Training shall provide by rule that a person shall not be appointed as a law enforcement officer, except on a temporary basis not to exceed one (1) year, unless the person has satisfactorily completed a preparatory program of police training at a school approved by the commission.

(2)(A) A law enforcement officer who lacks the education and training qualifications or background investigation required by the commission shall not have his or her temporary employment extended beyond one (1) year, by renewal of appointment or otherwise, unless extraordinary circumstances exist in the majority opinion of the executive body of the commission.

(B) If the executive body of the commission determines under subdivision (a)(2)(A) of this section that extraordinary circumstances exist, the commission may approve an extension of temporary employment for no more than an eight-month period.

(b)(1) In addition to the requirements of subsection (a) of this section and § 12-9-104(7), the commission, by rules and regulations, shall fix such other qualifications as it deems necessary.

(2) However, no person who pleads or is found guilty of a felony shall be eligible to be appointed or certified as a law enforcement officer.

(c) The commission shall issue a certificate evidencing satisfaction of the requirements of subsections (a) and (b) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in this or another state conforming to the content and

quality required by the commission for approved education and training.

(d) Nothing in this section shall be construed to preclude any employing agency from establishing qualifications and standards for hiring, training, compensating, or promoting law enforcement officers that exceed those set by the commission.

(e)(1) Law enforcement officers already serving under full-time permanent appointment on December 31, 1977, shall not be required to meet the requirements of subsections (a) and (b) of this section as a condition of tenure or continued employment, nor shall failure of any such law enforcement officer to fulfill the requirements make him or her ineligible.

(2) Law enforcement officers employed prior to January 1, 1976, may continue their employment and participate in training programs on a voluntary or assigned basis, but failure to meet standards shall not be grounds for their dismissal or termination of employment. Subsequent termination of employment, whether voluntary or involuntary, shall not result in revocation of this exclusion status but such officers shall have the same powers, privileges, and rights and shall be subject to the same rules and restrictions as are applicable to officers whose certification is based on formal training.

(3) Personnel of law enforcement agencies whose status as to coverage under this subchapter is questionable on December 31, 1977, but who are subsequently determined to be subject thereto, shall have an effective date of compliance enforcement as set by the commission, and personnel employed prior to that date shall be excluded from mandatory compliance therewith.

History. Acts 1975, No. 452, § 8; 1979, No. 642, § 1; 1983, No. 905, § 1; A.S.A. 1947, § 42-1007; Acts 1999, No. 1472, § 1; 2009, No. 793, § 2; 2013, No. 1061, § 1.

Amendments. The 2013 amendment deleted "or probationary" following "temporary" in (a).

12-9-107. Training programs.

(a)(1) For the purpose of this subchapter, the Arkansas Commission on Law Enforcement Standards and Training may cooperate with federal, state, and local law enforcement agencies in establishing and conducting instruction and training programs for law enforcement officers of this state, its counties, and municipalities.

(2) Cooperation under subdivision (a)(1) of this section may include without limitation the use of any training facility, equipment, or personnel to conduct training or provide services for any law enforcement or public safety purpose.

(b) The commission shall establish and maintain police training programs through such agencies and institutions as the commission may deem appropriate to carry out the intent of this subchapter, including provision for training participants under twenty-one (21) years of age in the Arkansas Police Corps Scholarship Program.

(c) The commission shall work with each state agency and political subdivision that adheres to the selection and training standards established by the commission to provide allowable tuition, living, and training expenses incurred by the officers in attendance at approved training programs.

(d)(1) It is the intent of this subchapter that the expenses of attending the approved training programs established under subsection (c) of this section shall be furnished by the state through the Arkansas Law Enforcement Training Academy or any other manner that may be prescribed by the commission, and no cost or charge shall be made to any local political subdivision for the actual cost of the training.

(2) The state shall not be liable for the travel cost or any salary in connection with attending any training program.

(3) The commission may accept reimbursement from any public or private entity for the use of its training facilities, equipment, or personnel during the providing of services.

(e) The expenses of attending training provided pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security shall be paid in accordance with the provisions of § 12-8-104.

(f) The commission shall administer the training and certification program for court security officers under the Arkansas Court Security Act, § 16-10-1001 et seq.

(g)(1) Persons such as doctors, nurses, firefighters, first responders, or other medical personnel, persons engaged in homeland security, or persons otherwise engaged in assisting in the protection of public welfare and safety who are not law enforcement personnel may attend training or receive instruction at the invitation of the commission.

(2) The commission may assess a fee on a person invited to attend training or receive instruction under this subsection to reimburse the commission for costs associated with the training or instruction under this subsection.

History. Acts 1975, No. 452, § 9; A.S.A. 1947, § 42-1008; Acts 1997, No. 1203, § 4; 2005, No. 907, § 3; 2007, No. 576, § 2; 2011, No. 188, § 1.

Amendments. The 2011 amendment redesignated former (a) as present (a)(1) and inserted (a)(2); substituted "Arkansas Law Enforcement Training Academy" for "law enforcement training academy" in (d)(1); and inserted (d)(3), (g)(1) and (g)(2).

12-9-114. Training concerning sexual assaults.

CASE NOTES

Scope of Duty to Train.

This section did not impose a duty on a county to train its officers not to sexually assault detainees. First, the statute did not create a duty for the county to train its officers on the laws concerning sexual assault and instead mandated that the subject be included in basic training, and second, even if the statute did imply that the county had a duty to ensure its officers

were trained on the laws concerning sexual assault, that obligation did not require that the county train its officers not to violate those laws, nor did it require that officers be trained on which violations constituted felonies. Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010).

12-9-116. Persons with disabilities training.

(a)(1) In accordance with the certification requirements of the Arkansas Commission on Law Enforcement Standards and Training for law enforcement officers, all law enforcement officers in the state shall complete additional continuing education and training as needed relating to persons with disabilities in a law enforcement context.

(2) Practicum training shall also be sufficient for the requirement under subdivision (a)(1) of this section.

(b) Training under subsection (a) of this section shall include without limitation:

(1) The dynamics of relating to a person with a disability;

(2) Interview techniques;

(3) Available supportive services; and

(4) Pro-arrest guidelines and drawbacks of dual arrest and practices to promote the safety of law enforcement officers.

History. Acts 2011, No. 1199, § 1.

Subchapter 2 — Law Enforcement Training Academy

12-9-206. Expenses furnished by academy — Exceptions.

(a) The Arkansas Law Enforcement Training Academy shall furnish, without cost to applicants, the necessary food, lodging, laundry, and other necessary expenses while attending the academy.

(b)(1) However, the salary of applicants and the necessary transportation cost in traveling to and from the academy shall be paid by the municipality or county in which employed.

(2) The travel expenses of a constable in attending the academy may be paid by the county.

History. Acts 1963, No. 526, § 5; A.S.A. 1947, § 42-705; Acts 2011, No. 561, § 1.

Amendments. The 2011 amendment substituted "may" for "shall" in (b)(2).

12-9-210. Designated law enforcement agencies.

(a) The Arkansas Law Enforcement Training Academy and the Black River Technical College Law Enforcement Training Academy are designated as law enforcement agencies.

(b) The primary role of the Arkansas Law Enforcement Training Academy and the Black River Technical College Law Enforcement Training Academy is to conduct law enforcement training.

History. Acts 2011, No. 272, § 1.

12-9-211. Private college or university law enforcement officers.

(a) A law enforcement officer for a private college or university is permitted to attend the Arkansas Law Enforcement Training Academy for training and instruction.

(b) The private college or university for which the law enforcement officer is employed shall:

(1) Pay any necessary transportation cost in traveling to and from the academy; and

(2) Reimburse the Arkansas Commission on Law Enforcement Standards and Training for any cost associated with the private college or university law enforcement officer's training or instruction at the academy.

History. Acts 2013, No. 227, § 2.

Subchapter 3 — Auxiliary Law Enforcement Officers

SECTION.

12-9-306. Number restricted.

(a)(1) Recognizing the need for limiting the number of auxiliary law enforcement officers in this state, a political subdivision may appoint up to twelve (12) auxiliary law enforcement officers regardless of the size of the law enforcement agency. Further, the political subdivision may appoint more auxiliary law enforcement officers equal to the larger number of:

(A) Two (2) auxiliary law enforcement officers for each full-time certified law enforcement officer employed by the appointing law enforcement agency; or

(B) One (1) auxiliary law enforcement officer for each one thousand (1,000) persons in the political subdivision as determined by the latest official census.

(2)(A) However, if due to special or unusual problems or circumstances, any political subdivision has a need for a greater number of auxiliary law enforcement officers than is authorized in subdivisions (a)(1)(A) or (B) of this section, it may make a request to the Arkansas Commission on Law Enforcement Standards and Training for the additional auxiliary law enforcement officers.

(B) Each request shall state the special or unusual problems involved which justify the request, the number of additional auxiliary

law enforcement officers requested, and such other information as the commission may require.

(C) If the commission finds that the public interest will best be served by allowing the political subdivision to appoint the additional auxiliary law enforcement officers requested, it may grant the request.

(b) Honorary police officers without law enforcement authority are not restricted in number by this section.

(c) The limitation concerning number of auxiliary law enforcement officers allowed to be appointed by a law enforcement agency under this section does not apply to additional auxiliary law enforcement officers appointed by political subdivisions to serve as school resource officers or search and rescue officers.

History. Acts 1983, No. 757, § 6; A.S.A. 1947, § 42-1406; Acts 2013, No. 705, § 1.

Amendments. The 2013 amendment rewrote the introductory language of (a)(1); in (a)(1)(A), substituted "Two (2)" for "One (1)" and substituted "officers" for "officer"; and added (c).

Subchapter 4 — Radar Instructors and Operators

12-9-402. Powers and duties of the commission.

In addition to the powers conferred upon the Arkansas Commission on Law Enforcement Standards and Training in §§ 12-9-104 — 12-9-107, the commission shall have power to:

(1) Promulgate rules and regulations for the administration of this subchapter;

(2) Require the submission of reports and information by law enforcement agencies within this state;

(3) Establish minimum selection and training standards for appointment as a police traffic radar operator and police traffic radar instructor. The standards may take into account different requirements for urban and rural areas;

(4) Establish minimum curriculum requirements for the basic radar operator's course, the basic radar instructor's course, and the refresher courses for the radar operators and the radar instructors;

(5) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, community colleges, and other institutions or organizations concerning the development of police traffic radar training schools and programs or courses of instruction;

(6) Approve institutions and facilities to be used by or for the state or any political subdivision thereof for the specific purpose of training radar operators and radar instructors;

(7) Exclude part-time law enforcement officers and honorary law enforcement officers from training classes sponsored and supported by the Arkansas Law Enforcement Training Academy for the training of radar operators and radar instructors;

(8) Adopt rules and minimum standards for such schools and courses which shall include, but not be limited to, establishing minimum:

(A) Basic and refresher training requirements which police radar operators and police radar instructors must satisfactorily complete before being eligible for radar certification;

(B) Course attendance and equipment requirements; and

(C) Requirements for instructors;

(9) Conduct review of agency records to assist any department head in complying with the provisions of this subchapter;

(10) Adopt and amend bylaws, consistent with law, for its internal management and control; and

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of this subchapter.

History. Acts 1983, No. 672, § 2; A.S.A. 1947, § 42-1011; Acts 2011, No. 1240, § 2.

Amendments. The 2011 amendment deleted "auxiliary law enforcement officers" following "Exclude" in (7).

12-9-403. Appointment and training.

(a) No person shall be appointed as a police traffic radar operator or police traffic radar instructor until the minimum standards for training requirements have been completed.

(b) The training requirements for police traffic radar operators or police traffic radar instructors shall be established by the Arkansas Commission on Law Enforcement Standards and Training.

(c) The commission may issue a certificate evidencing satisfactory completion of the requirements of this subchapter when evidence is submitted by the law enforcement agency director, chief, or county sheriff that the police traffic radar operator has met the training requirements.

(d) Nothing in this section shall be construed to preclude any law enforcement agency from establishing qualifications and standards for appointing and training of police traffic radar operators and police traffic radar instructors that exceed those set by this subchapter or by the commission.

(e) Any police traffic radar operator or police traffic radar instructor failing to meet the training requirements as set forth in this subchapter shall lose his or her authority to operate a police traffic radar for enforcement purposes.

(f) A law enforcement officer shall complete the commission-required training for officer certification before being eligible for certification as a police traffic radar operator.

(g) Only a full-time law enforcement officer, part-time I law enforcement officer, part-time II law enforcement officer, or an auxiliary law enforcement officer appointed as a reserve law enforcement officer as

defined by commission rule is eligible for certification as a police traffic radar operator.

History. Acts 1983, No. 672, § 4; A.S.A. 1947, § 42-1013; Acts 1997, No. 734, § 1; 2005, No. 1962, § 28; 2011, No. 1240, § 3.

Amendments. The 2011 amendment, in (g), inserted "or an auxiliary law enforcement officer appointed as a reserve law enforcement officer" and substituted "rule is" for "regulation, will be."

Subchapter 5 — Management Training and Education

SECTION.
12-9-501. Legislative determination.

12-9-501. Legislative determination.

(a) The Criminal Justice Institute, an educational entity, was created for the purpose of providing management education and training, technical assistance, practical research and evaluation, a clearinghouse, and computer and forensic education and training for Arkansas law enforcement and national law enforcement.

(b) The initiatives developed by the Criminal Justice Institute are applicable on a national level, and this application for conceptualization and practice will be through the National Center for Rural Law Enforcement.

(c)(1) The General Assembly recognizes the importance of providing management, education, and training to law enforcement and, through the initiatives developed by the Criminal Justice Institute, the citizens of the State of Arkansas will be better served.

(2) These initiatives further the enhancement of the workforce through the developmental process of continuing education by which skills are upgraded and capabilities increased.

(3) This process will assist law enforcement ability to adapt to an ever-changing environment.

(d)(1) The General Assembly further recognizes that:

(A) Law enforcement plays a significant role in preventing and responding to acts of violence, terrorism, and natural disasters that occur on public school campuses; and

(B) Matters of public school campus safety require specialized education and training for law enforcement officers, school resource officers, and other school personnel who respond to incidents on school campuses:

(i) To develop and maintain strong partnerships between school personnel and law enforcement in preventing and responding to acts of violence, terrorism, and natural disaster that occur on public school campuses; and

(ii) For law enforcement officers to operate effectively in a school setting.

(2) Initiatives of the Criminal Justice Institute for specialized education and training on public school campus safety will enhance citizen

cooperation and understanding of law enforcement in these areas and other issues of crime and violence against school children.

History. Acts 1993, No. 1111, § 1; 1997, No. 1035, § 1; 2013, No. 484, § 4.

A.C.R.C. Notes. Acts 2013, No. 484, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds that:

"(1) Crime and violence remain issues in Arkansas public schools and nationwide;

"(2) The citizens of Arkansas have twice experienced the tragedy of a school shooting:

"(A) In 1997 when two (2) Stamps High School students were shot and wounded by sniper fire from a fellow student; and

"(B) In 1998 when four (4) students and one (1) teacher were killed at Westside Middle School in Jonesboro and nine (9) more students and one (1) teacher were wounded;

"(3) In 2007, the National Center for Education Statistics reported that an average of nine and one-tenths percent (9.1%) of Arkansas's public high school students had been threatened or injured with a weapon on school property, compared to the national average of seven and eight-tenths percent (7.8%); and

"(4) With the increasing levels of crime and violence in our schools, school administrators and personnel must be prepared for more than the academic challenges of teaching students. They must also:

"(A) Develop and maintain a strong partnership with law enforcement; and

"(B) Be trained to recognize and assume their roles and responsibilities for preventing and responding to acts of violence, terrorism, natural disaster, and other crimes impacting the school environment."

Acts 2013, No. 484, § 5, provided: "TEMPORARY LANGUAGE. To provide law enforcement officers and school personnel the opportunity to receive the training and education required under this act, school districts shall implement the annual active shooter drills beginning in the 2014-2015 school year."

Amendments. The 2013 amendment added (d).

CHAPTER 10

COMMUNICATIONS SYSTEMS

SUBCHAPTER.

3. Arkansas Public Safety Communications Act of 1985.

Subchapter 3 — Arkansas Public Safety Communications Act of 1985

SECTION.

A.C.R.C. Notes. Acts 2012, No. 213, § 11, provided: "ENHANCED 9-1-1 SYSTEM. Funds appropriated in Section 9 of this Act are to be allocated to support the deployment of a hosted supplemental 9-1-1 database service in Arkansas. This supplemental database should allow for Arkansans to provide information to 9-1-1 to be used in emergency scenarios. This database service should:

"a) Collect a variety of formatted data relevant to 9-1-1 and first responder

needs. Among other items, this information should include photographs of the citizen, physical descriptions, medical information, household data, and emergency contacts.

"b) Allow for information to be entered by Arkansans via a secure website where they can elect to provide as little or as much information as they choose.

"c) Automatically display data provided by Arkansas to 9-1-1 call takers for all types of phones (Landline, Mobile, VoIP) when a call is placed to 9-1-1 from a registered and confirmed phone number.

"d) Support the delivery of citizen information via a secure internet connection to all PSAPs within Arkansas.

"e) Service should work across all 9-1-1 call taking equipment in Arkansas and allow for the easy transfer of information into Computer Aided Dispatch (CAD) or Records Management Systems (RMS).

"f) Data should be made available at a city, county, state, or national level to help protect Arkansans wherever they are.

"g) Data should be made available to first responders.

"h) Be designed to work in today's environment or future i3-based systems.

"i) Demonstrate the ability to assist Arkansans with functional needs such as the deaf and hard of hearing, families with autism, physical and mental disabilities, and special rescue needs."

Effective Dates. Acts 2013, No. 623, § 8: Jan. 1, 2014. Effective date clause provided: "This act is effective on and after January 1, 2014."

12-10-303. Definitions. [Effective January 1, 2014.]

As used in this subchapter:

(1) "Automatic location identification" means an enhanced 911 service capability that enables the automatic display of information defining the geographical location of the telephone used to place the 911 call;

(2) "Automatic number identification" means an enhanced 911 service capability that enables the automatic display of the ten-digit number used to place a 911 call from a wire line, wireless, voice over internet protocol, or any nontraditional phone service;

(3) "Basic 911 system" means a system by which the various emergency functions provided by public and private safety agencies within each political subdivision may be accessed utilizing the three-digit number 911, but no available options are included in the system;

(4) "Board" means the Arkansas Emergency Telephone Services Board created by this subchapter;

(5) "Chief executive" means the Governor, county judges, mayors, city managers, or city administrators of incorporated places, and is synonymous with head of government, dependent on the level and form of government;

(6) "CMRS connection" means each account or number assigned to a CMRS customer;

(7)(A) "Commercial mobile radio service" or "CMRS" means commercial mobile service under §§ 3(27) and 332(d), Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993.

(B)(i) "Commercial mobile radio service" or "CMRS" includes any wireless, two-way communication device, including radio-telephone

communications used in cellular telephone service, personal communication service, or the functional and competitive or functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line.

(ii) "Commercial mobile radio service" or "CMRS" does not include services whose customers do not have access to 911 or a 911-like service, a communication channel suitable only for data transmission, a wireless roaming service or other nonlocal radio access line service, or a private telecommunications system;

(8) "Dispatch center" means a public or private agency that dispatches public or private safety agencies but does not operate a 911 public safety answer point;

(9) "Enhanced 911 network features" means those features of selective routing that have the capability of automatic number and location identification;

(10)(A) "Enhanced 911 system" means enhanced 911 service, which is a telephone exchange communications service consisting of telephone network features and public safety answering points designated by the chief executive that enables users of the public telephone system to access a 911 public safety communications center by dialing the digits "911".

(B) The service directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification;

(11) "Exchange access facilities" means all lines provided by the service supplier for the provision of local exchange service, as defined in existing general subscriber services tariffs;

(12) "Governing authority" means county quorum courts and governing bodies of municipalities;

(13) "911 public safety communications center" means the communications center operated on a twenty-four-hour basis by one (1) of the operating agencies defined by this subchapter and as designated by the chief executive of the political subdivision that includes the public safety answering point and dispatches one (1) or more public safety agencies;

(14) "Nontraditional phone service" means any service that:

(A) Enables real-time voice communications from the user's location to customer premise equipment;

(B) Permits users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network; and

(C) Has the capability of placing a 911 call;

(15) "Nontraditional phone service connection" means each account or number assigned to a nontraditional phone service customer;

(16)(A) "Operating agency" means the public safety agency authorized and designated by the chief executive of the political subdivision to operate a 911 public safety communications center.

(B) Operating agencies are limited to offices of emergency services, fire departments, and law enforcement agencies of the political subdivisions;

(17) "Prepaid wireless telecommunications service" means a prepaid wireless calling service as defined in § 26-52-314;

(18) "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or emergency medical services;

(19) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides firefighting, rescue, natural, or human-caused disaster or major emergency response, law enforcement, and ambulance or emergency medical services;

(20) "Public safety answering point" means the location at which 911 calls are initially answered;

(21) "Public safety officers" means specified personnel of public safety agencies;

(22) "Readiness costs" means equipment and payroll costs associated with equipment, call takers, and dispatchers on standby waiting for 911 calls;

(23) "Service supplier" means any person, company, or corporation, public or private, providing exchange telephone service or CMRS service throughout the political subdivision;

(24) "Selective routing" means the method employed to direct 911 calls to the appropriate public safety answering point based on the geographical location from which the call originated;

(25) "Service user" means any person, company, corporation, business, association, or party not exempt from county or municipal taxes or utility franchise assessments who is provided landline telephone service, CMRS service, voice over internet protocol service, or any nontraditional phone service with the capability of placing a 911 call in the political subdivision;

(26)(A) "Tariff rate" means the rate or rates billed by a service supplier as stated in the service supplier's tariffs, price lists, customer contracts, or other methods of publishing service offerings that represent the service supplier's recurring charges for exchange access facilities, exclusive of all:

(i) Taxes;

(ii) Fees;

(iii) Licenses; or

(iv) Similar charges whatsoever.

(B) The tariff rate per county may include extended service area charges only if an emergency telephone service charge has been levied in a county and a resolution of intent has been passed by a county's quorum court that defines tariff rate as being inclusive of extended service area charges;

(27) "Voice over internet protocol connection" means each account or number assigned to a voice over internet protocol customer;

(28) "Voice over internet protocol service" means any service that:

(A) Enables real-time voice communications;

(B) Requires a broadband connection from the user's location;

(C) Requires internet protocol compatible customer premise equipment;

(D) Permits users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network; and

(E) Has the capability of placing a 911 call; and

(29) "Wireless telecommunications service provider" means a provider of commercial mobile radio services:

(A) As defined in 47 U.S.C. § 332(b), as it existed on January 1, 2006, including all broadband personal communications services, wireless radio telephone services, geographic-area-specialized and enhanced-specialized mobile radio services, and incumbent, wide area, specialized mobile radio licensees that offer real-time, two-way voice service interconnected with the public switched telephone network; and

(B) That either:

(i) Is doing business in the State of Arkansas; or

(ii) May connect with a public safety communications center.

History. Acts 1985, No. 683, § 3; A.S.A. 1947, § 73-1824; Acts 1997, No. 810, § 1; 2003, No. 668, § 1; 2007, No. 582, § 1; 2009, No. 1221, § 1; 2013, No. 623, §§ 1, 2.

Publisher's Notes. For version of section effective until January 1, 2014, see the bound volume.

Amendments. The 2013 amendment rewrote (17); and substituted "price lists, customer service contracts, or other methods of publishing service offerings that represent" for "and approved by the Arkansas Public Service Commission, which represents" in (26)(A).

Effective Dates. Acts 2013, No. 623, § 8: Jan. 1, 2014. Effective date clause provided: "This act is effective on and after January 1, 2014."

12-10-318. Emergency telephone service charges — Imposition — Liability. [Effective until January 1, 2014.]

(a)(1)(A) When so authorized by a majority of the persons voting within the political subdivision in accordance with the law, the governing authority of each political subdivision may levy an emergency telephone service charge in the amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or the amount up to five percent (5%) of the tariff rate, except that any political subdivision with a population of fewer than twenty-seven thousand five hundred (27,500) according to the 1990 Federal Decennial Census may, by a majority vote of the electors voting on the issue, levy an emergency telephone charge in an amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

(B) The governing authority of a political subdivision that has been authorized under subdivision (a)(1)(A) of this section to levy an emergency telephone service charge in an amount up to twelve percent (12%) of the tariff rate may decrease the percentage rate to not less than four percent (4%) of the tariff rate for those telephone service users that are served by a telephone company with fewer than two hundred (200) access lines in this state as of the date of the election conducted under subdivision (a)(1)(A) of this section.

(2) Upon its own initiative, the governing authority of the political subdivision may call such a special election to be held in accordance with § 7-11-201 et seq.

(b)(1)(A)(i) There is levied a commercial mobile radio service emergency telephone service charge in an amount of sixty-five cents (65¢) per month per commercial mobile radio service connection that has a place of primary use within the State of Arkansas.

(ii)*(a)* A commercial mobile radio service provider may determine, bill, collect, and retain an additional amount to reimburse the commercial mobile radio service provider for enabling and providing 911 and enhanced 911 services and capability in the network and for the facilities and associated equipment.

(b) The commercial mobile radio service provider may add any amounts implemented under this subdivision (b)(1)(A)(ii) to the sixty-five cents (65¢) levied in subdivision (b)(1)(A)(i) of this section so that the commercial mobile radio service emergency telephone service charges appear as a single line item on a subscriber's bill.

(B)(i) There is levied a service charge of sixty-five cents (65¢) per month on prepaid wireless telephone service subscribers whose mobile set telephone numbers are assigned to the State of Arkansas.

(ii) Providers of prepaid wireless telephone service shall collect and remit the service charge under one (1) of the following methods:

(a) The CMRS provider shall collect on a monthly basis the sixty-five cents (65¢) service charge from each prepaid wireless telephone service customer whose account balance is equal to or greater than the amount of the service charge; or

(b) The CMRS provider shall divide the total earned prepaid wireless telephone service revenue received by the CMRS provider with respect to each prepaid wireless telephone service customer in the state within the monthly 911 reporting period by fifty dollars ($50.00) and multiply the quotient by the service charge amount.

(iii) In the case of prepaid wireless telephone service:

(a) The monthly wireless 911 surcharge imposed by this subdivision (b)(1)(B) shall be remitted based upon each prepaid wireless telephone associated with this state for each wireless service customer that has a sufficient positive balance as of the last day of each month;

(b) The surcharge shall be remitted in any manner consistent with the wireless provider's existing operating or technological abilities, such as customer address, location associated with the mobile tele-

phone number, or reasonable allocation method based upon other comparable relevant data; and

(c)(1) If direct billing is not feasible, the prepaid subscriber's account may be reduced by the surcharge amount or an equivalent number of minutes.

(2) However, collection of the wireless 911 surcharge under this subdivision (b)(1)(B)(iii)(*c*) does not reduce the sales price for any tax collected at the point of sale.

(C) There is levied a voice over internet protocol emergency telephone service charge in an amount of sixty-five cents (65¢) per month per voice over internet protocol connection that has a place of primary use within the State of Arkansas.

(D) There is levied a nontraditional telephone service charge in an amount of sixty-five cents (65¢) per month per nontraditional service connection that has a place of primary use within the State of Arkansas.

(E) Except for prepaid wireless telephone service, the service charge levied in subdivision (b)(1)(A) of this section and any additional amounts implemented under subdivision (b)(1)(B) of this section and collected by commercial mobile radio service providers that provide mobile telecommunications services as defined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on January 1, 2001, shall be collected pursuant to the Mobile Telecommunications Sourcing Act.

(2)(A) The service charges collected under subdivision (b)(1)(A) of this section, less administrative fees under subdivision (c)(3) of this section, shall be remitted to the Arkansas Emergency Telephone Services Board within sixty (60) days after the end of the month in which the fees are collected.

(B) The funds collected pursuant to subdivision (b)(1)(A) of this section shall not be deemed revenues of the state and shall not be subject to appropriation by the General Assembly.

(c)(1) There is established the Arkansas Emergency Telephone Services Board, consisting of the following:

(A) The Auditor of State or his or her designated representative;

(B) Two (2) representatives selected by a majority of the commercial mobile radio service providers licensed to do business in the state;

(C) Two (2) 911 system employees selected by a majority of the public safety answering point administrators in the state;

(D) The Director of the Arkansas Department of Emergency Management or the director's designee;

(E) One (1) consumer member to be appointed by the President Pro Tempore of the Senate; and

(F) One (1) consumer member to be appointed by the Speaker of the House of Representatives.

(2) The responsibilities of the board shall be as follows:

(A) To establish and maintain an interest-bearing account into which will be deposited revenues from the service charges levied under subdivision (b)(1)(A) of this section;

(B) To manage and disburse the funds from the account levied under subdivision (b)(1)(A) of this section in the following manner:

(i)*(a)* Not less than eighty-three and five-tenths percent (83.5%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section shall be distributed on a population basis to each political subdivision operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service 911 calls on dedicated 911 trunk lines for expenses incurred for the answering, routing, and proper disposition of 911 calls, including payroll costs, readiness costs, and training costs associated with wireless, voice over internet protocol, and nontraditional 911 calls.

(b) Each state fiscal year, one hundred twenty thousand dollars ($120,000) of the total monthly revenues collected and remitted under subdivision (c)(2)(B)(i)(*a*) of this section shall be transferred and deposited to the credit of the books of the Treasurer of State and the Auditor of State for the Miscellaneous Agencies Fund Account for the Arkansas Commission on Law Enforcement Standards and Training, to be used exclusively for training and all related costs under § 12-10-325;

(ii)*(a)* Not more than fifteen percent (15%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section shall be held in the interest-bearing account. The board shall report to Legislative Council in the event the sum held under this subdivision (c)(2)(B)(ii)(*a*) becomes less than three million five hundred thousand dollars ($3,500,000).

(b) These funds may be utilized by the public safety answering points for the following purposes in connection with compliance with the Federal Communications Commission requirements: upgrading, purchasing, programming, installing, and maintaining necessary data, basic 911 GIS mapping, hardware, and software, including any network elements required to supply enhanced 911 phase II cellular, voice over internet protocol, and other nontraditional telephone service.

(c) Invoices must be presented to the board in connection with any request for reimbursement and be approved by a majority vote of the board to receive reimbursement.

(d) Any invoices presented to the board for reimbursements of costs not described by this section may be approved only by a unanimous vote of the board;

(iii) Not more than five-tenths percent (0.5%) of the fees collected under subdivision (b)(1)(A) of this section may be utilized by the board to compensate the independent auditor and for administrative expenses;

(iv) All interest received on funds in the interest-bearing account shall be disbursed as prescribed in subdivision (c)(2)(B)(i) of this section; and

(v)*(a)* All cities and counties receiving funds under this section shall submit to the board no later than April 1 of each year an

explanation and accounting of the funds received and expenditures of those funds for the previous calendar year, along with a copy of the budget for the previous year and a copy of the year-end appropriation and expenditure analysis of any participating or supporting counties, cities, or agencies.

(b)(1) The board may require any other information necessary to ensure that the funds have been properly utilized according to this section.

(2) All cities and counties receiving funds under this section also shall submit to the board no later than April 1 of each year a copy of all documents reflecting the 911 funds received for the previous calendar year, including without limitation wireless, wireline, general revenues, sales taxes, and other sources used by the city or county for 911 services.

(c) Failure to submit the proper accounting information and failure to utilize the funds in a proper manner may result in the suspension or reduction of funding until corrected;

(C)(i) To promulgate rules necessary to perform its duties prescribed by this subchapter.

(ii) In determining the population basis for distribution of funds under subdivision (c)(2)(B)(i) of this section, the board shall determine, based on the latest federal decennial census, the population of all unincorporated areas of counties operating a 911 public safety communications center that has the capacity of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines, and the population of all incorporated areas operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines and compare the population of each of those political subdivisions to the total population;

(D) To submit annual reports to the office of the Auditor of State outlining fees collected and moneys disbursed to public safety answering points under subdivision (b)(1)(A) of this section; and

(E)(i) To retain an independent third-party auditor for the purposes of receiving, maintaining, and verifying the accuracy of any proprietary information submitted to the board by commercial mobile radio service providers.

(ii) Due to the confidential and proprietary nature of the information submitted by commercial mobile radio service providers, the information shall be retained by the independent auditor in confidence, shall be subject to review only by the Auditor of State, and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor released to any third party.

(iii) The information collected by the independent auditor shall be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual commercial mobile radio service provider.

(3) Commercial mobile radio service providers, voice over internet protocol, or other nontraditional communications providers shall be entitled to retain one percent (1%) of the fees collected under subdivision (b)(1)(A) of this section as reimbursement for collection and handling of the charges.

(d)(1) Notwithstanding any other provision of the law, in no event shall any commercial mobile radio, voice over internet protocol service, or nontraditional service provider, or its officers, employees, assigns, or agents be liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, or provision of 911 service.

(2) Nor shall any commercial mobile radio, voice over internet protocol, or nontraditional service provider, its officers, employees, assigns, or agents be liable for civil damages or be criminally liable in connection with the release of subscriber information to any governmental entity as required under the provisions of this subchapter.

(e) The service charge shall have uniform application and shall be imposed throughout the political subdivision to the greatest extent possible in conformity with availability of the service in any area of the political subdivision.

(f)(1) An emergency telephone service charge, except with regard to the commercial mobile radio service emergency telephone service charge, shall be imposed only upon the amount received from the tariff rate exchange access lines.

(2)(A) If there is no separate exchange access charge stated in the service supplier's tariffs, the governing authority shall, except with regard to the commercial mobile radio service emergency telephone service charge, determine a uniform percentage not in excess of eighty-five percent (85%) of the tariff rate for basic exchange telephone service.

(B) This percentage shall be deemed to be the equivalent of tariff rate exchange access lines and shall be used until such time as the service supplier establishes such a tariff rate.

(3)(A) No service charge shall be imposed upon more than one hundred (100) exchange access facilities per person per location.

(B) No service charge shall be imposed upon more than one hundred (100) voice over internet protocol connections per person per location.

(C) Trunks or service lines used to supply service to commercial mobile radio service providers shall not have a service charge levied against them.

(4) Any emergency telephone service charge, including the commercial mobile radio service emergency telephone service charge, shall be added to and may be stated separately in the billing by the service supplier to the service user.

(5) Every billed service user shall be liable for any service charge imposed under this subsection until it has been paid to the service supplier.

(g) The political subdivision may pursue against a delinquent service user any remedy available at law or in equity for the collection of a debt.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826; Acts 1995, No. 627, § 1; 1997, No. 106, § 1; 1997, No. 810, § 2; 1997, No. 952, § 1; 1999, No. 46, § 1; 2001, No. 907, § 3; 2003, No. 111, § 1; 2003, No. 1792, § 1; 2005, No. 1997, § 1; 2005, No. 2145, § 16; 2007, No. 582, § 2; 2007, No. 1049, § 33; 2009, No. 1221, § 2; 2009, No. 1480, § 48; 2011, No. 640, § 1; 2013, No. 1170, § 1.

Publisher's Notes. For the text of section effective January 1, 2014, see the following version.

Amendments. The 2011 amendment inserted (c)(2)(B)(i)(*b*); inserted "(c)(2)(B)(ii)(*a*)" in (c)(2)(B)(ii)(*a*); and substituted "rules" for "regulations" in (c)(2)(C)(i).

The 2013 amendment added (c)(1)(D) through (c)(1)(F).

12-10-318. Emergency telephone service charges — Imposition — Liability. [Effective January 1, 2014.]

(a)(1)(A) When so authorized by a majority of the persons voting within the political subdivision in accordance with the law, the governing authority of each political subdivision may levy an emergency telephone service charge in the amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or the amount up to five percent (5%) of the tariff rate, except that any political subdivision with a population of fewer than twenty-seven thousand five hundred (27,500) according to the 1990 Federal Decennial Census may, by a majority vote of the electors voting on the issue, levy an emergency telephone charge in an amount assessed by the political subdivision on a per-access-line basis as of January 1, 1997, or an amount up to twelve percent (12%) of the tariff rate.

(B) The governing authority of a political subdivision that has been authorized under subdivision (a)(1)(A) of this section to levy an emergency telephone service charge in an amount up to twelve percent (12%) of the tariff rate may decrease the percentage rate to not less than four percent (4%) of the tariff rate for those telephone service users that are served by a telephone company with fewer than two hundred (200) access lines in this state as of the date of the election conducted under subdivision (a)(1)(A) of this section.

(2) Upon its own initiative, the governing authority of the political subdivision may call such a special election to be held in accordance with § 7-11-201 et seq.

(b)(1)(A)(i) There is levied a commercial mobile radio service emergency telephone service charge in an amount of sixty-five cents (65¢) per month per commercial mobile radio service connection that has a place of primary use within the State of Arkansas.

(ii)*(a)* A commercial mobile radio service provider may determine, bill, collect, and retain an additional amount to reimburse the commercial mobile radio service provider for enabling and providing 911 and enhanced 911 services and capability in the network and for the facilities and associated equipment.

(b) The commercial mobile radio service provider may add any amounts implemented under this subdivision (b)(1)(A)(ii) to the

sixty-five cents (65¢) levied in subdivision (b)(1)(A)(i) of this section so that the commercial mobile radio service emergency telephone service charges appear as a single line item on a subscriber's bill.

(B) There is levied a voice over internet protocol emergency telephone service charge in an amount of sixty-five cents (65¢) per month per voice over internet protocol connection that has a place of primary use within the State of Arkansas.

(C) There is levied a nontraditional telephone service charge in an amount of sixty-five cents (65¢) per month per nontraditional service connection that has a place of primary use within the State of Arkansas.

(D) The service charge levied in subdivision (b)(1)(A) of this section and collected by commercial mobile radio service providers that provide mobile telecommunications services as defined by the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, as in effect on January 1, 2001, shall be collected pursuant to the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.

(2)(A) The service charges collected under subdivision (b)(1)(A) of this section, less administrative fees under subdivision (c)(3) of this section, shall be remitted to the Arkansas Emergency Telephone Services Board within sixty (60) days after the end of the month in which the fees are collected.

(B) The funds collected pursuant to subdivision (b)(1)(A) of this section shall not be deemed revenues of the state and shall not be subject to appropriation by the General Assembly.

(c)(1) There is established the Arkansas Emergency Telephone Services Board, consisting of the following:

(A) The Auditor of State or his or her designated representative;

(B) Two (2) representatives selected by a majority of the commercial mobile radio service providers licensed to do business in the state;

(C) Two (2) 911 system employees selected by a majority of the public safety answering point administrators in the state;

(D) The Director of the Arkansas Department of Emergency Management or the director's designee;

(E) One (1) consumer member to be appointed by the President Pro Tempore of the Senate; and

(F) One (1) consumer member to be appointed by the Speaker of the House of Representatives.

(2) The responsibilities of the board shall be as follows:

(A) To establish and maintain an interest-bearing account into which shall be deposited revenues from the service charges levied under subdivision (b)(1)(A) of this section and prepaid wireless E911 charges under § 12-10-326;

(B) To manage and disburse the funds from the interest-bearing account established under subdivision (c)(2)(A) of this section in the following manner:

(i)*(a)* Not less than eighty-three and five-tenths percent (83.5%) of the total monthly revenues collected and remitted under subdivision

(b)(1)(A) of this section and prepaid wireless E911 charges under § 12-10-326 shall be distributed on a population basis to each political subdivision operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service 911 calls on dedicated 911 trunk lines for expenses incurred for the answering, routing, and proper disposition of 911 calls, including payroll costs, readiness costs, and training costs associated with wireless, voice over internet protocol, and nontraditional 911 calls.

(b) Each state fiscal year, one hundred twenty thousand dollars ($120,000) of the total monthly revenues collected and remitted under subdivision (c)(2)(B)(i)(*a*) of this section shall be transferred and deposited to the credit of the books of the Treasurer of State and the Auditor of State for the Miscellaneous Agencies Fund Account for the Arkansas Commission on Law Enforcement Standards and Training, to be used exclusively for training and all related costs under § 12-10-325;

(ii)*(a)* Not more than fifteen percent (15%) of the total monthly revenues collected and remitted under subdivision (b)(1)(A) of this section and prepaid wireless E911 charges under § 12-10-326 shall be held in the interest-bearing account. The board shall report to the Legislative Council in the event the sum held under this subdivision (c)(2)(B)(ii)(*a*) becomes less than three million five hundred thousand dollars ($3,500,000).

(b) These funds may be utilized by the public safety answering points for the following purposes in connection with compliance with the Federal Communications Commission requirements: upgrading, purchasing, programming, installing, and maintaining necessary data, basic 911 geographic information system mapping, hardware, and software, including any network elements required to supply enhanced 911 phase II cellular, voice over internet protocol, and other nontraditional telephone service.

(c) Invoices must be presented to the board in connection with any request for reimbursement and be approved by a majority vote of the board to receive reimbursement.

(d) Any invoices presented to the board for reimbursements of costs not described by this section may be approved only by a unanimous vote of the board;

(iii) Not more than five-tenths percent (0.5%) of the fees collected under subdivision (b)(1)(A) of this section and prepaid wireless E911 charges under § 12-10-326 may be utilized by the board to compensate the independent auditor and for administrative expenses;

(iv) All interest received on funds in the interest-bearing account shall be disbursed as prescribed in subdivision (c)(2)(B)(i) of this section; and

(v)*(a)* All cities and counties receiving funds under this section shall submit to the board no later than April 1 of each year an explanation and accounting of the funds received and expenditures of

those funds for the previous calendar year, along with a copy of the budget for the previous year and a copy of the year-end appropriation and expenditure analysis of any participating or supporting counties, cities, or agencies.

(b)(1) The board may require any other information necessary to ensure that the funds have been properly utilized according to this section.

(2) All cities and counties receiving funds under this section also shall submit to the board no later than April 1 of each year a copy of all documents reflecting the 911 funds received for the previous calendar year, including without limitation wireless, wireline, general revenues, sales taxes, and other sources used by the city or county for 911 services.

(c) Failure to submit the proper accounting information and failure to utilize the funds in a proper manner may result in the suspension or reduction of funding until corrected;

(C)(i) To promulgate rules necessary to perform its duties prescribed by this subchapter.

(ii) In determining the population basis for distribution of funds under subdivision (c)(2)(B)(i) of this section, the board shall determine, based on the latest federal decennial census, the population of all unincorporated areas of counties operating a 911 public safety communications center that has the capacity of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines, and the population of all incorporated areas operating a 911 public safety communications center that has the capability of receiving commercial mobile radio service, voice over internet protocol service, or nontraditional 911 calls on dedicated 911 trunk lines and compare the population of each of those political subdivisions to the total population;

(D) To submit annual reports to the office of the Auditor of State outlining fees collected and moneys disbursed to public safety answering points from service charges under subdivision (b)(1)(A) of this section and prepaid wireless E911 charges under § 12-10-326; and

(E)(i) To retain an independent third-party auditor for the purposes of receiving, maintaining, and verifying the accuracy of any proprietary information submitted to the board by commercial mobile radio service providers.

(ii) Due to the confidential and proprietary nature of the information submitted by commercial mobile radio service providers, the information shall be retained by the independent auditor in confidence, shall be subject to review only by the Auditor of State, and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., nor released to any third party.

(iii) The information collected by the independent auditor shall be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual commercial mobile radio service provider.

(3) Commercial mobile radio service providers, voice over internet protocol, or other nontraditional communications providers shall be entitled to retain one percent (1%) of the fees collected under subdivision (b)(1)(A) of this section as reimbursement for collection and handling of the charges.

(d)(1) Notwithstanding any other provision of the law, in no event shall any commercial mobile radio, voice over internet protocol service, or nontraditional service provider, or its officers, employees, assigns, or agents be liable for civil damages or criminal liability in connection with the development, design, installation, operation, maintenance, performance, or provision of 911 service.

(2) Nor shall any commercial mobile radio, voice over internet protocol, or nontraditional service provider, its officers, employees, assigns, or agents be liable for civil damages or be criminally liable in connection with the release of subscriber information to any governmental entity as required under the provisions of this subchapter.

(e) The service charge shall have uniform application and shall be imposed throughout the political subdivision to the greatest extent possible in conformity with availability of the service in any area of the political subdivision.

(f)(1) An emergency telephone service charge, except with regard to the commercial mobile radio service emergency telephone service charge, shall be imposed only upon the amount received from the tariff rate exchange access lines.

(2)(A) If there is no separate exchange access charge stated in the service supplier's tariffs, the governing authority shall, except with regard to the commercial mobile radio service emergency telephone service charge, determine a uniform percentage not in excess of eighty-five percent (85%) of the tariff rate for basic exchange telephone service.

(B) This percentage shall be deemed to be the equivalent of tariff rate exchange access lines and shall be used until such time as the service supplier establishes such a tariff rate.

(3)(A) No service charge shall be imposed upon more than one hundred (100) exchange access facilities per person per location.

(B) No service charge shall be imposed upon more than one hundred (100) voice over internet protocol connections per person per location.

(C) Trunks or service lines used to supply service to commercial mobile radio service providers shall not have a service charge levied against them.

(4) Any emergency telephone service charge, including the commercial mobile radio service emergency telephone service charge, shall be added to and may be stated separately in the billing by the service supplier to the service user.

(5) Every billed service user shall be liable for any service charge imposed under this subsection until it has been paid to the service supplier.

(g) The political subdivision may pursue against a delinquent service user any remedy available at law or in equity for the collection of a debt.

History. Acts 1985, No. 683, § 5; A.S.A. 1947, § 73-1826; Acts 1995, No. 627, § 1; 1997, No. 106, § 1; 1997, No. 810, § 2; 1997, No. 952, § 1; 1999, No. 46, § 1; 2001, No. 907, § 3; 2003, No. 111, § 1; 2003, No. 1792, § 1; 2005, No. 1997, § 1; 2005, No. 2145, § 16; 2007, No. 582, § 2; 2007, No. 1049, § 33; 2009, No. 1221, § 2; 2009, No. 1480, § 48; 2011, No. 640, § 1; 2013, No. 623, §§ 3–5; 2013, No. 1170, § 1.

Publisher's Notes. For the text of section effective until January 1, 2014, see the preceding version.

Amendments. The 2011 amendment inserted (c)(2)(B)(i)(*b*); inserted "(c)(2)(B)(ii)(*a*)" in (c)(2)(B)(ii)(*a*); and substituted "rules" for "regulations" in (c)(2)(C)(i).

The 2013 amendment by No. 623 deleted former (b)(1)(B) and redesignated the remaining subdivisions accordingly; in (b)(1)(D), deleted "Except for prepaid wireless telephone service" from the beginning, deleted "and any additional amounts implemented under subdivision (b)(1)(B) of this section" preceding "and collected," and inserted "Pub. L. No. 106-252"; substituted "shall" for "will" in (c)(2)(A); substituted "interest-bearing account established under subdivision (c)(2)(A)" for "the account levied under subdivision (b)(1)(A)" in (c)(2)(B); inserted "and prepaid wireless E911 charges under § 12-10-326" in (c)(2)(A), (c)(2)(B)(i)(*a*), (c)(2)(B)(ii)(*a*) and (c)(2)(B) (iii), (c)(2)(D); and inserted "from service charges" in (c)(2)(D).

The 2013 amendment by No. 1170 added (c)(1)(D) through (c)(1)(F).

Effective Dates. Acts 2013, No. 623, § 8: Jan. 1, 2014. Effective date clause provided: "This act is effective on and after January 1, 2014."

12-10-323. Authorized expenditures of revenues.

(a)(1) Any revenue generated under §§ 12-10-318 — 12-10-321 may be expended only in direct connection with the provision of 911 services and only for the following purposes:

(A) The engineering, installation, and recurring costs necessary to implement, operate, and maintain a 911 telephone system;

(B) The costs necessary for forwarding and transfer capabilities of calls from the 911 public safety communication center to dispatch centers or to other 911 public safety communication centers;

(C) Engineering, construction, lease, or purchase costs to lease, purchase, build, remodel, or refurbish a 911 public safety communication center and for necessary emergency and uninterruptable power supplies for the center;

(D) Personnel costs, including salary and benefits, of each position charged with supervision and operation of the 911 public safety communication center and system;

(E) Purchase, lease, operation, and maintenance of consoles, telephone and communications equipment owned or operated by the political subdivisions and physically located within and for the use of the 911 public safety communication center, and radio or microwave towers and equipment with lines that terminate in the 911 public safety communication center;

(F) Purchase, lease, operation, and maintenance of computers, data processing equipment, associated equipment, and leased audio or data lines assigned to and operated by the 911 public safety communication center for the purposes of coordinating or forwarding

calls, dispatch, or recordkeeping of public safety and private safety agencies for which the 911 public safety communication center is the public safety answering point and to provide information assistance to those agencies;

(G) Supplies, equipment, public safety answering point personnel training, vehicles, and vehicle maintenance, if such items are solely and directly related to and incurred by the political subdivision in mapping, addressing, and readdressing a 911 system; and

(H) Training costs and all costs related to training under this subchapter.

(2) Nothing in this subsection shall be interpreted or construed as authorizing a political subdivision to purchase emergency response vehicles, law enforcement vehicles, or other political subdivision vehicles from such funds.

(b) Expenditure of revenue generated by §§ 12-10-318 — 12-10-321 for purposes not identified in this section is prohibited.

(c) Appropriations of funds from any source other than §§ 12-10-318 — 12-10-321 may be expended for any purpose and may supplement the authorized expenditures of this section and may fund other activities of the 911 public safety communication center not associated with the provision of emergency services.

History. Acts 1985, No. 683, § 6; A.S.A. 1947, § 73-1827; Acts 1989, No. 524, § 1; 1991, No. 1196, § 5; 1997, No. 952, § 2; 2003, No. 176, § 1; 2011, No. 640, § 2.

Amendments. The 2011 amendment substituted "coordinating or forwarding calls" for "coordinating, forwarding of calls" in (a)(1)(F); and added (a)(1)(H).

12-10-325. Training standards.

(a)(1) A public safety agency, a public safety answering point, a dispatch center, or a 911 public safety communications center may provide training opportunities for 911 public safety communication center personnel through the Arkansas Commission on Law Enforcement Standards and Training and the Arkansas Law Enforcement Training Academy.

(2) The Arkansas Law Enforcement Training Academy shall develop training standards for dispatchers and instructors in Arkansas in consultation with the Association of Public-Safety-Communications Officials-International, Inc. and submit the training standards to the Arkansas Commission on Law Enforcement Standards and Training for approval.

(3)(A) Training for instructors may include without limitation instructor development, course development, leadership development, and other appropriate 911 instructor training.

(B) Training for dispatchers may include without limitation call taking, customer service, stress management, mapping, call processing, telecommunication and radio equipment training, training with devices for the deaf, autism, and other appropriate 911 dispatcher training.

(4) An entity that provides training under subdivision (a)(1) of this section may retain training records created under this section.

(b) A private safety agency that performs dispatch functions is not eligible for training under this section.

History. Acts 2011, No. 640, § 3.

12-10-326. Prepaid wireless E911 service charges. [Effective January 1, 2014.]

(a) As used in this section:

(1) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction;

(2) "Occurring in this state" means a retail transaction that is:

(A) Conducted in person by a consumer at a business location of a seller in this state; or

(B) Treated as occurring in this state for purposes of the gross receipts tax provided under § 26-52-521(b);

(3) "Prepaid wireless E911 charge" means the charge for prepaid wireless telecommunications service that is required to be collected by a seller from a consumer under subsection (b) of this section;

(4) "Provider" means a person that provides prepaid wireless telecommunications service under a license issued by the Federal Communications Commission;

(5)(A) "Retail transaction" means each purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(B)(i) "Retail transaction" includes a separate purchase of prepaid wireless telecommunications service that is paid contemporaneously with another purchase of prepaid wireless telecommunications service if separately stated on an invoice, receipt, or similar document provided by the seller to the consumer at the time of sale.

(ii) "Retail transaction" includes a recharge as defined in § 26-52-314 of prepaid wireless telecommunications service;

(6) "Seller" means a person who sells prepaid wireless telecommunications service to another person; and

(7) "Wireless telecommunications service" means a commercial mobile radio service as defined under § 12-10-303.

(b)(1) For each retail transaction occurring in this state, the seller shall collect from the consumer a prepaid wireless E911 charge of sixty-five cents (65¢).

(2)(A) The amount of the prepaid wireless E911 charge shall be stated either separately on an invoice, receipt, or similar document that is provided to the consumer at the time of sale by the seller or otherwise disclosed to the consumer.

(B) If the amount of the prepaid wireless E911 charge is stated separately on an invoice, receipt, or similar document provided to the consumer at the time of sale by the seller, the amount of the prepaid wireless E911 charge shall not be included in the base for measuring

any tax, fee, surcharge, or other charge that is imposed by the state, a political subdivision of the state, or an intergovernmental agency.

(c) If prepaid wireless telecommunications service of ten (10) minutes or less or five dollars ($5.00) or less is sold with a prepaid wireless device for a single, nonitemized price, then the seller is not required to collect the fee specified in subdivision (b)(1) of this section.

(d)(1) Except as provided in subdivision (d)(2) of this section, a seller shall report and pay one hundred percent (100%) of the prepaid wireless E911 charge plus any penalties and interest due to the Director of the Department of Finance and Administration in the same manner and at the same time as the gross receipts tax under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(2) A seller that meets the prompt payment requirements of § 26-52-503 may deduct and retain three percent (3%) of the prepaid wireless E911 charge.

(e) The Arkansas Tax Procedure Act, § 26-18-101 et seq., applies to a prepaid wireless E911 charge.

(f) The department shall pay all remitted prepaid wireless E911 charges within thirty (30) days of receipt to the Arkansas Emergency Telephone Services Board for use by the board under § 12-10-318(c).

(g) A provider or seller is not liable for damages to a person resulting from or incurred in connection with:

(1) Providing or failing to provide 911 or E911 service;

(2) Identifying or failing to identify the telephone number, address, location, or name associated with a person or device that is accessing or attempting to access 911 or E911 service; or

(3) Providing lawful assistance to a federal, state, or local investigator or law enforcement officer conducting a lawful investigation or other law enforcement activity.

(h) A provider or seller is not liable for civil damages or criminal liability in connection with:

(1) The development, design, installation, operation, maintenance, performance, or provision of 911 service; or

(2) The release of subscriber information to a governmental entity as required by the Arkansas Public Safety Communications Act of 1985, § 12-10-301 et seq.

(i)(1) The prepaid wireless E911 charge imposed by this section shall be the only E911 funding obligation imposed for prepaid wireless telecommunications service in this state.

(2) Except for the prepaid wireless E911 charge imposed under this section, no other tax, fee, surcharge, or other charge shall be imposed upon prepaid wireless telecommunication services by the state, a political subdivision of the state, or an intergovernmental agency for the purpose of implementing and supporting emergency telephone services.

History. Acts 2013, No. 623, § 6.

Effective Dates. Acts 2013, No. 623, § 8: Jan. 1, 2014. Effective date clause provided: "This act is effective on and after January 1, 2014."

CHAPTER 11

PREVENTION OF PUBLIC OFFENSES

SECTION.

12-11-106 — 12-11-109. [Repealed.]

Publisher's Notes. These sections, concerning discharge or further requirement of security, security by recognizance, security after commitment, and breaches of bond, were repealed by Acts 2011, No. 779, § 4, They were derived from the following sources:

12-11-106. Crim. Code, §§ 376, 378, 379; C. & M. Dig., §§ 3345-3348; Pope's Dig., §§ 4193-4196; A.S.A. 1947, §§ 42-220 — 42-222.

12-11-107. Crim. Code, § 382; C. & M. Dig., § 3349; Pope's Dig., § 4197; A.S.A. 1947, § 42-223.

12-11-108. Crim. Code, § 377; C. & M. Dig., § 3350; Pope's Dig., § 4198; A.S.A. 1947, § 42-224

12-11-109 Crim. Code, §§ 380, 381; C. & M. Dig., §§ 3351, 3352; Pope's Dig., §§ 4199, 4200; A.S.A. 1947, §§ 42-225, 42-226.

12-11-110. Drunken, insane, and disorderly persons.

A law enforcement officer shall arrest a drunken, insane, or disorderly person whom he or she finds at large and not in the care of a competent person.

History. Crim. Code, §§ 383-385, 387; C. & M. Dig., §§ 3353-3357; Pope's Dig., §§ 4201-4205; A.S.A. 1947, §§ 42-227 — 42-230; Acts 2011, No. 779, § 5.

Amendments. The 2011 amendment rewrote the section.

CHAPTER 12

CRIME REPORTING AND INVESTIGATIONS

SUBCHAPTER.

Subchapter 1 — General Provisions

12-12-103. Pawnshop records — Penalty.

(a) A pawnshop or pawnbroker doing business in the State of Arkansas shall keep a record showing in detail all property pawned or purchased with the pawnshop or pawnbroker.

(b) The records required under subsection (a) of this section shall include:

(1) A detailed record of each transaction, including the type of identification displayed by the person from whom the property was received;

(2) The name, address, race, sex, height, weight, and date of birth of the person from whom the property was received;

(3) The driver's license number, personal identification number issued under § 27-16-805, or the number from another form of photographic identification of the person from whom the property was received; and

(4) A description of each item pawned or purchased, including without limitation the identifying numbers or serial numbers.

(c)(1)(A) One (1) copy of the records required under subsection (a) of this section shall be maintained on file with the pawnshop or pawnbroker for a period of three (3) years.

(B) The Director of the Department of Arkansas State Police, a member of the Department of Arkansas State Police, a county sheriff or deputy of the county, or a police officer of the municipality in which the pawnshop or pawnbroker is located shall have access to the records at any reasonable time.

(2) The director, the county sheriff, or the chief of police in the county or municipality in which the pawnshop or pawnbroker is located may require a report of transactions for a period of time that he or she deems necessary for the efficient enforcement of the criminal laws or to aid in criminal investigations.

(d)(1) The failure of a pawnbroker or an owner or operator of a pawnshop to comply with a provision of this section is a violation punishable by a fine of not more than one thousand dollars ($1,000).

(2) Each day a pawnbroker or owner or operator of a pawnshop fails to comply with this section is a separate offense.

(e)(1) Pawnshops and pawnbrokers shall:

(A) Keep the records required by this section in a designated electronic format; and

(B) Daily upload the records in the designated electronic format to:

(i) A centralized secure tracking system and Internet website designated by the chief law enforcement officer of a county, city, or local government; or

(ii) A different centralized secure tracking system and Internet website other than the centralized secure tracking system and Internet website designated under subdivision (e)(1)(B)(i) of this section if designated by county or municipal ordinance.

(2) The electronic records submitted under this subsection (e) shall be used for the sole purpose of investigating crimes. Pawnshops, pawnbrokers, and pawn customers shall not be required to incur any costs or increased fees as a result of the city, county, or state collecting and processing records required by this section electronically.

History. Acts 1945, No. 231, § 18; 1975, No. 880, § 1; 1985, No. 544, § 1; A.S.A. 1947, § 42-418; Acts 1991, No. 471, § 1; 1995, No. 965, § 1; 2005, No. 1994, § 75; 2007, No. 262, § 1; 2013, No. 404, § 1; 2013, No. 1293, § 1.

Amendments. The 2013 amendment rewrote (a); redesignated (b)(1) as (b); deleted "and every" following "each" in (b)(A); substituted "another" for "some other" in (b)(C); rewrote (b)(D); deleted former (b)(2); and rewrote (c)(2), (d), and (e).

12-12-104. Physical evidence in sex offense prosecutions—Retention and disposition.

(a) In a prosecution for a sex offense or a violent offense, the law enforcement agency shall preserve, subject to a continuous chain of custody, any physical evidence secured in relation to a trial and sufficient official documentation to locate that evidence.

(b)(1) After a trial resulting in conviction, the evidence shall be impounded and securely retained by a law enforcement agency.

(2) Retention shall be the greater of:

(A) Permanent following any conviction for a violent offense;

(B) For twenty-five (25) years following any conviction for a sex offense; and

(C) For seven (7) years following any conviction for any other felony for which the defendant's genetic profile may be taken by a law enforcement agency and submitted for comparison to the State DNA Data Base for unsolved offenses.

(c) After a conviction is entered, the prosecuting attorney or law enforcement agency having custody of the evidence may petition the court with notice to the defendant for entry of an order allowing disposition of the evidence if, after a hearing and a reasonable period of time in which to respond, the court determines by a preponderance of the evidence that:

(1) The evidence has no significant value for forensic analysis and must be returned to its rightful owner; or

(2) The evidence has no significant value for forensic analysis and is of a size, bulk, or physical character not usually retained by the law enforcement agency and cannot practicably be retained by the agency.

(d) The court may order the disposition of the evidence if the defendant is allowed the opportunity to take reasonable measures to remove or preserve portions of the evidence in question for future testing.

(e)(1) It is unlawful for any person to purposely fail to comply with the provisions of this section.

(2) A person who violates this section is guilty of a Class A misdemeanor.

(f) As used in this section:

(1) "Law enforcement agency" means any police force or organization whose primary responsibility as established by statute or ordinance is the enforcement of the criminal laws, traffic laws, or highway laws of this state;

(2) "Sex offense" means:

(A) Rape, § 5-14-103;

(B) Sexual indecency with a child, § 5-14-110;

(C) Sexual assault in the first degree, § 5-14-124;

(D) Sexual assault in the second degree, § 5-14-125;

(E) Sexual assault in the third degree, § 5-14-126;

(F) Sexual assault in the fourth degree, § 5-14-127;

(G) Incest, § 5-26-202;

(H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(I) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(J) Employing or consenting to use of child in sexual performance, § 5-27-402;

(K) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(L) Computer child pornography, § 5-27-603;

(M) Computer exploitation of a child in the first degree, § 5-27-605(a);

(N) Promoting prostitution in the first degree, § 5-70-104;

(O) Stalking, § 5-71-229;

(P) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(2); or

(Q) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(2); and

(3) "Violent offense" means:

(A) Capital murder, § 5-10-101, murder in the first degree, § 5-10-102, or murder in the second degree, § 5-10-103;

(B) Manslaughter, § 5-10-104;

(C) Kidnapping, § 5-11-102;

(D) False imprisonment in the first degree, § 5-11-103;

(E) Permanent detention or restraint, § 5-11-106;

(F) Robbery, § 5-12-102;

(G) Aggravated robbery, § 5-12-103;

(H) Battery in the first degree, § 5-13-201;

(I) Battery in the second degree, § 5-13-202;

(J) Aggravated assault, § 5-13-204;

(K) Terroristic threatening in the first degree, § 5-13-301;

(L) Domestic battering in the first degree, § 5-26-303, domestic battering in the second degree, § 5-26-304, and domestic battering in the third degree, § 5-26-305;

(M) Aggravated assault on family or household member, § 5-26-306;

(N) Engaging in a continuing criminal gang, organization, or enterprise, § 5-74-104;

(O) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(3); or

(P) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(3).

History. Acts 2001, No. 1780, § 11; 2011, No. 779, § 6.

Amendments. The 2011 amendment rewrote (f)(2) and (f)(3).

12-12-107. Adult abuse and domestic violence reporting.

(a) As used in this section:

(1) "Adult" means an individual eighteen (18) years of age or older who is not a maltreated adult under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq.; and

(2) "Health care provider" means a person, corporation, facility, or institution licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(b) A health care provider may report to a law enforcement agency an injury to an adult that the health care provider has reason to believe is the result of a battery or other physically abusive conduct, including physical injuries resulting from domestic violence, if the:

(1) Injured adult agrees; or

(2) Health care provider determines that the report is necessary to prevent serious harm to the injured adult.

(c) A health care provider that makes a report under subdivision (b)(2) of this section shall promptly inform the injured adult that the report has been or will be made.

(d) A report under this section shall state the name of the injured adult and the character and extent of the adult's injuries.

(e) A report under this section shall be made to one (1) or more of the following law enforcement agencies:

(1) The county sheriff;

(2) Within a city of the first class, the municipal law enforcement agency; or

(3) The Department of Arkansas State Police.

(f) A health care provider making or deciding not to make a report in good faith under this section is immune from criminal or civil liability for making or deciding not to make the report.

History. Acts 2011, No. 1004, § 1.

Subchapter 2 — Arkansas Crime Information Center

A.C.R.C. Notes. Acts 2013, No. 1503, § 1, provided: "Legislative intent. The purpose of this act is to study the development and implementation of a public website containing information on persons convicted of a crime pertaining to child abuse and neglect."

Acts 2013, No. 1503, § 2, provided: "Study established. The Prosecutor Coordinator, the Administrative Office of the Courts, the Arkansas Sentencing Commission, and the Arkansas Crime Information Center are directed to study the development and implementation of a state public website containing information on persons convicted of a crime pertaining to child abuse and neglect to address without limitation the following issues:

"(1) Creating and operating a public website that contains information on persons convicted of a crime pertaining to child abuse and neglect;

"(2) Amending the form or forms used by a prosecuting attorney to capture data on convictions pertaining to child abuse and neglect;

"(3) Collecting information from the forms used by a prosecuting attorney;

"(4) Placing an offender's identifying information on the public website;

"(5) Updating information on the public website if an offender's conviction is overturned, expunged, or sealed;

"(6) Estimating the cost to amend the form or forms used by a prosecuting attorney, collect the data, and implement the public website; and

"(7) Estimating the cost to maintain the public website, including staffing requirements."

Acts 2013, No. 1503, § 3, provided: "Report required.

"(a) The Arkansas Crime Information Center shall submit a report of its findings under this act to the Legislative Council by September 1, 2014.

"(b) The report shall include a summary of findings on all issues addressed under Section 2 of this act."

12-12-204. [Repealed.]

Publisher's Notes. This section, concerning the Arkansas crime prevention office act, was repealed by Acts 2013, No. 1277, § 1. The section was derived from Acts 1985, No. 402, §§ 1-3; A.S.A. 1947, §§ 5-1121 — 5-1123.

12-12-212. Release or disclosure to unauthorized person — Penalty.

(a) A person is guilty of a Class A misdemeanor upon conviction if the person:

(1) Knowingly accesses information or willfully obtains information collected and maintained under this subchapter for a purpose not specified by this subchapter; or

(2) Knowingly releases or discloses information maintained under this subchapter to another person who lacks authority to receive the information.

(b) A person is guilty of a Class D felony upon conviction if the person violates subsection (a) of this section for the purpose of:

(1) Furthering the commission of a misdemeanor offense or felony offense by the person or another person;

(2) Enhancing or assisting a person's position in a legal proceeding in this state or influencing the outcome of a legal proceeding in this state for the benefit of the person or a member of the person's family;

(3) Causing a pecuniary or professional gain for the person or a member of the person's family; or

(4) Political purposes for the person or a member of the person's family.

History. Acts 1971, No. 286, § 10; 1975, No. 742, § 9; A.S.A. 1947, § 5-1110; Acts 1997, No. 826, § 3; 2011, No. 779, § 7; 2011, No. 1224, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b) and Acts 2011, No. 779, § 25, the amendments to this section by Acts 2011, No. 779, § 7 are superseded by the amendments to this section by Acts 2011, No. 1224, § 1.

Acts 2011, No. 1224, § 3, provided: "The provisions of this act shall not be retroactive."

Amendments. The 2011 amendment by No. 779 substituted "knowingly releases or discloses" for "shall release or disclose" and "upon conviction is guilty" for "shall be deemed guilty."

The 2011 amendment by No. 1224 rewrote the section.

12-12-216. Carry forward.

(a) At the close of each fiscal year, the Director of the Arkansas Crime Information Center shall certify to the Chief Fiscal Officer of the State the amount, if any, of unexpended moneys and appropriations in the Crime Information System Fund or its successor resulting from the reimbursement to the Arkansas Crime Information Center by municipal, county, state, or federal governments for teleprocessing services.

(b)(1) Any balance of such moneys and appropriations shall be carried forward and made available for the maintenance, operation, improvement, and other necessary expenditures in providing teleprocessing services to such municipal, county, state, and federal agencies served by the center.

(2) The total amount that is carried forward under this section shall be reported in the budget manuals that are presented to the Legislative Council and Joint Budget Committee during the presession budget hearings.

History. Acts 1997, No. 911, § 9; 2011, No. 779, § 8.

Amendments. The 2011 amendment substituted "budget hearings" for "budget hearings which are held in the fall of each even-numbered year" in (b)(2).

12-12-217. Annual report.

(a) On July 31 of each year the Arkansas Crime Information Center shall submit an annual report to the Legislative Council showing the number of persons arrested for each criminal offense classification, comparing the state and each individual reporting agency.

(b) The report shall include a breakdown by race of all persons arrested in each criminal offense classification.

History. Acts 2003, No. 1031, § 2; 2011, No. 779, § 9.

Amendments. The 2011 amendment deleted "and the Commission on Disparity in Sentencing" following "Legislative Council" in (a).

12-12-218. Registry of certain court orders.

(a) As used in this section, "center system" means the registry of all court orders issued under §§ 5-2-310(b), 5-2-314(b), 20-47-214, and 20-47-215 maintained by the Arkansas Crime Information Center under this section.

(b)(1) The Arkansas Crime Information Center shall maintain the center system as provided under this section.

(2) Only orders that are consistent with § 5-2-310(b), § 5-2-314(b), § 20-47-214, or § 20-47-215 shall be entered into the center system.

(c) Information contained in the center system shall be determined by the Supervisory Board for the Arkansas Crime Information Center and shall include, at a minimum, the person's name and date of birth.

(d) Information contained in the center system is not disclosable under applicable state or federal law and shall be available at all times only to courts, law enforcement personnel, and prosecuting attorneys.

History. Acts 2013, No. 470, § 1.

Subchapter 3 — State Crime Laboratory

12-12-302. Board created — Members — Meetings.

(a)(1) There is created a State Crime Laboratory Board.

(2)(A) The members of the board shall be appointed by the Governor and confirmed by the Senate.

(B) However, a vacancy may be temporarily filled by the Governor until the Senate shall next meet.

(b) The members appointed by the Governor shall be composed of:

(1) One (1) member of the active judiciary;
(2) One (1) practicing member of the legal profession;
(3) One (1) active county sheriff;
(4) One (1) active chief of police;
(5) One (1) active prosecuting attorney;
(6) Two (2) physicians engaged in the active practice of private or academic medicine; and
(7) One (1) member at large from the state.

(c)(1) Appointments to the board shall be for a term of seven (7) years.

(2)(A) All appointments made at any time other than the day following the expiration of a term shall be made for the unexpired portion of the term.

(B) If, however, the Governor shall not make an appointment by January 15 of the year in which the term expires, that member shall continue to serve until he or she is reappointed or a successor is appointed, and the term of that member shall run for seven (7) years from January 15 in the year the term expired rather than for seven (7) years from the date of actual appointment.

(d)(1) The board shall meet and elect one (1) of its members as chair and one (1) as vice chair.

(2) The chair shall have the power to call meetings of the board upon due notice of the meeting to all members of the board.

(e) A majority of the members of the board shall constitute a quorum to transact the business of the board.

(f) The board shall meet a minimum of one (1) time every three (3) months. Failure of any appointee to attend three (3) consecutive meetings shall constitute cause for removal from the board by the Governor.

(g) Members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq. The sums shall be paid from the appropriated maintenance and general operations funds of the State Crime Laboratory.

History. Acts 1991, No. 383, § 2; 1997, No. 250, § 67; 2011, No. 219, § 1.

Amendments. The 2011 amendment deleted "to be composed of eight (8) members" at the end of (a)(1); in (a)(2)(A), deleted the first sentence and substituted "The members of the board" for "the remaining seven (7) members of the board"; and substituted "Two (2) physicians" for "One (1) physician" in (b)(6).

12-12-305. Housing and equipment — Functions.

(a) There shall be established under the supervision of the Executive Director of the State Crime Laboratory a central office and laboratory facility sufficient and adequate to house the various functions of the laboratory as set out in this subchapter and as may be necessary and proper for the laboratory to perform in carrying out its official duties and functions as provided by law.

(b) The laboratory shall have the equipment and personnel necessary to respond to the needs of all law enforcement agencies in the State of Arkansas with respect to the following functions:

(1) Forensic toxicology, including without limitation chemical testing and analysis of body fluids and the performance of procedures to determine the presence and significance of toxic agents both in the investigation of death cases authorized by this subchapter and in other appropriate cases;

(2) Criminalistics, including without limitation chemical testing of trace evidence, physical and microscopic analysis of evidence, latent fingerprint identification and classification, firearms and toolmarks identification, serology, DNA analysis, DNA database administration, and computer forensic analysis;

(3) Drug analysis, including without limitation analyzing and identifying substances suspected as being controlled, illicit, or contraband drugs;

(4) Pathology and biology, including the investigation and determination of the cause and manner of deaths that become subject to the jurisdiction of the State Medical Examiner under § 12-12-318 and the general application of the medical sciences to assist the criminal justice system in the State of Arkansas; and

(5) Any other laboratory divisions, sections, or functions that, in the opinion of the State Crime Laboratory Board, may serve the needs of law enforcement in the State of Arkansas for laboratory analysis.

History. Acts 1979, No. 864, §§ 7, 8; A.S.A. 1947, §§ 42-1209, 42-1210; 2013, No. 323, § 1.

Amendments. The 2013 amendment substituted "including without limitation" for "which shall include, but is not limited to" throughout (b); in (b)(2), deleted "questioned document examination and classification" preceding "latent fingerprint," and substituted "serology, DNA analysis, DNA database administration, and computer forensic analysis" for "and analysis, and, serology"; in (b)(4), substituted "including the investigation and determination" for "which shall include investigating and making a determination," substituted "under" for "as set out in," and deleted "shall include" preceding "the general."

12-12-306. State Medical Examiner.

(a) The Executive Director of the State Crime Laboratory shall appoint and employ a State Medical Examiner with the approval of the State Crime Laboratory Board.

(b) The executive director may remove the examiner only for cause and with the approval of the board.

History. Acts 1991, No. 383, § 3; 2011, No. 775, § 1.

Amendments. The 2011 amendment, in (a), substituted "Executive Director of the State Crime Laboratory" for "State Crime Laboratory Board" and added "with the approval of the State Crime Laboratory Board"; and, in (b), substituted "executive director" for "board" and added "and with the approval of the board."

12-12-312. Records confidential and privileged — Exception — Release.

(a)(1)(A)(i) The records, files, and information kept, obtained, or retained by the State Crime Laboratory under this subchapter are privileged and confidential.

(ii) The records, files, and information shall be released only under and by the direction of a court of competent jurisdiction, the prosecuting attorney having criminal jurisdiction over the case, or the public defender appointed or assigned to the case.

(iii) In cases in which the cause and manner of death are not criminal in nature, the laboratory may communicate without prior authorization required under subdivision (a)(1)(A)(ii) of this section with the decedent's next of kin or the next of kin's designee, including without limitation:

(a) Parents;

(b) Grandparents;

(c) Siblings;

(d) Spouses;

(e) Adult children; or

(f) Legal guardians.

(B)(i) This section does not diminish the right of a defendant or his or her attorney to full access to all records pertaining to the case.

(ii) The laboratory shall disclose to a defendant or his or her attorney all evidence in the defendant's case that is kept, obtained, or retained by the laboratory.

(iii) The Department of Health may access autopsy records, files, and information under this subchapter for the purpose of implementing the quality improvement provisions of the Trauma System Act, § 20-13-801 et seq., and the rules adopted by the State Board of Health under the Trauma System Act, § 20-13-801 et seq.

(2) However, a full report of the facts developed by the State Medical Examiner or his or her assistants shall be promptly filed with the law enforcement agencies, county coroner, and prosecuting attorney of the jurisdiction in which the death occurred.

(b) The State Crime Laboratory Board shall promulgate rules and regulations not contrary to law regarding the release of reports and information by the staff of the laboratory.

(c) All records, files, and information obtained or developed by the laboratory pertaining to a capital offense committed by a defendant who is subsequently sentenced to death for the commission of that offense shall be preserved and retained until the defendant's execution.

History. Acts 1969, No. 321, § 11; 1979, No. 864, § 16; A.S.A. 1947, §§ 42-621, 42-1218; Acts 1993, No. 1304, § 1; 1999, No. 519, § 1; 2001, No. 211, § 1; 2001, No. 917, § 1; 2011, No. 892, § 1; 2013, No. 298, § 1.

Amendments. The 2011 amendment added "that is kept, obtained, or retained by the laboratory" in (a)(1)(B)(ii); and inserted (a)(1)(B)(iii).

The 2013 amendment added (a)(1)(A)(iii).

CASE NOTES

Photocopying Costs.

Petitioner failed to show he had a right to copies of a report on latent fingerprint analysis, because indigency alone did not entitle a petitioner to free photocopying, and the petitioner had not fully established that the document that he sought existed or if it did exist, that it was not furnished to his counsel at trial. Hill v. State, 2012 Ark. 309, — S.W.3d — (2012).

12-12-313. Records as evidence — Analyst's testimony.

(a) The records and reports of autopsies, evidence analyses, drug analyses, and any investigations made by the State Crime Laboratory under the authority of this subchapter shall be received as competent evidence as to the matters contained therein in the courts of this state subject to the applicable rules of criminal procedure or civil procedure when duly attested to by the Executive Director of the State Crime Laboratory or his or her assistants, associates, or deputies.

(b) This section does not abrogate a defendant's right of cross-examination if notice of intention to cross-examine is given before the date of a hearing or trial pursuant to the applicable rules of criminal procedure or civil procedure.

(c) The testimony of the appropriate analyst may be compelled by the issuance of a proper subpoena, in which case the records and reports shall be admissible through the analyst who shall be subject to cross-examination by the defendant or his or her counsel, either in person or via two-way closed-circuit or satellite-transmitted television pursuant to subsection (e) of this section.

(d)(1) All records and reports of an evidence analysis of the laboratory shall be received as competent evidence as to the facts in any court or other proceeding when duly attested to by the analyst who performed the analysis.

(2) The defendant shall give at least ten (10) days' notice prior to the proceedings that he or she requests the presence of the analyst of the laboratory who performed the analysis for the purpose of cross-examination.

(3) Nothing in this subsection shall be construed to abrogate the defendant's right to cross-examine.

(e) Except trials in which the defendant is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, in all criminal trials upon motion of the prosecutor the court may allow the prosecutor to present the testimony of the appropriate analyst by contemporaneous transmission from a laboratory facility via two-way closed-circuit or satellite-transmitted television which shall allow the examination and cross-examination of the analyst to proceed as though the analyst were testifying in the courtroom:

(1) After notice to the defendant;

(2) Upon proper showing of good cause and sufficient safeguards to satisfy all state and federal constitutional requirements of oath, confrontation, cross-examination, and observation of the witness's demeanor and testimony by the defendant, the court, and the jury; and

(3) Absent a showing of prejudice by the defendant.

History. Acts 1979, No. 864, § 18; A.S.A. 1947, § 42-1220; Acts 1989, No. 889, §§ 1, 2; 1999, No. 565, § 1; 2013, No. 297, § 1.

Amendments. The 2013 amendment inserted "or civil procedure" in (a) and (b).

CASE NOTES

Analysis

Crime Lab Report.
Right of Confrontation.

Crime Lab Report.

State presented substantial evidence through testimony from a forensic chemist from the state crime laboratory, although he did not perform the lab analysis for a substance obtained from a controlled buy involving defendant, and the lab report indicated that the substance contained methamphetamine, to show that the substance sold by defendant was a controlled substance under this section. Jackson v. State, 2011 Ark. App. 528, 385 S.W.3d 394 (2011).

Right of Confrontation.

Although defendant argued that the introduction of a crime laboratory report without the chemist being available for cross-examination violated his right to confront the witnesses against him, defendant failed to give the required notice requesting the analyst's presence. Defendant cited no authority for his argument that he was excused from the notice requirement because the analyst, who was on maternity leave and was not called as a witness by the prosecution, appeared on the prosecution's witness list. Jones v. State, 2011 Ark. App. 683, — S.W.3d — (2011).

12-12-314. Fees — Disposition.

(a) The State Crime Laboratory shall charge certain fees in an amount to be determined by the State Crime Laboratory Board, but subject to the limitations set forth in this section for certain records, reports, and consultations by laboratory physicians and analysts, and expert witness testimony provided in the trial of civil lawsuits, as follows:

(1) A fee shall be charged for records and reports of the laboratory in a reasonable amount to be set by the board when the request for the report shall be from an entity other than a law enforcement or criminal justice system agency;

(2)(A) A fee shall be charged in an amount to be set by the board for consultations, scientific or medical research, depositions, expert witness testimony, and travel to and from courts.

(B) The fees under subdivision (a)(2)(A) of this section shall be at a rate not to exceed two hundred twenty-five dollars ($225) per hour or one thousand eight hundred dollars ($1,800) per day and shall be levied against the requesting individual, agency, or organization for work done in civil cases in which laboratory personnel involvement results from the performance of duties and responsibilities under this subchapter; and

(3) A charge of up to three thousand dollars ($3,000) for each autopsy requested by non-law enforcement officials.

(b) At no time shall any fee be levied or charge made to or against any law enforcement agency of the State of Arkansas for work performed under the provisions of this subchapter.

(c)(1) All fees collected by the laboratory for copies of the following shall be deposited as a refund to expenditures:

(A) Autopsy reports;

(B) Autopsies requested by the Federal Aviation Administration, the Federal Bureau of Prisons, or the Department of Health for sudden infant death syndrome cases; and

(C) Expenses paid employees for testimony as expert witnesses.

(2) Other moneys derived from the charges provided for and authorized by this section shall be deposited into the State Treasury to the credit of the Miscellaneous Agencies Fund Account of the State General Government Fund.

History. Acts 1975, No. 350, § 4; 1979, No. 864, § 22; 1985, No. 644, § 4; A.S.A. 1947, §§ 42-1224, 42-1225; Acts 1995, No. 1189, § 1; 2011, No. 775, § 2; 2013, No. 296, § 1; 2013, No. 1129, § 1.

Amendments. The 2011 amendment, in (a)(2)(B), inserted "under subdivision (a)(2)(A) of this section," substituted "two hundred twenty-five dollars ($225)" for "seventy-five dollars ($75.00)," and substituted "one thousand eight hundred dollars ($1,800)" for "six hundred dollars ($600)"; and substituted "three thousand dollars ($3,000)" for "one thousand dollars ($1,000)" in (a)(3).

The 2013 amendment by No. 296 rewrote (c)(1).

The 2013 amendment by No. 1129 inserted "an entity" in (a)(1).

12-12-320. Autopsies — Removal of pituitary gland.

(a) The State Medical Examiner and his or her assistants may remove the pituitary gland during the course of an autopsy and donate the pituitary gland to an appropriate organization.

(b) However, the pituitary gland shall not be removed under the authority of this section if the next of kin or the person having the right to control the disposition of the decedent's remains objects.

History. Acts 1981, No. 984, § 1; A.S.A. 1947, § 42-1213.2; Acts 2011, No. 779, § 10.

Amendments. The 2011 amendment substituted "an appropriate organization" for "the Arkansas Dwarf Association" in (a).

Subchapter 6 — Knife and Gunshot Wound Reporting

SECTION.

12-12-602. Report of treatment required.

(a) All physicians, surgeons, hospitals, druggists, or other persons or entities that render first aid treatment to a person shall report as provided in subsection (b) of this section if they treat or receive in the hospital a case of a:

(1) Knife or gunshot wound when the knife or gunshot wound appears to have been intentionally inflicted; or

(2) Burn wound that could reasonably be connected to criminal activity that is:

(A) A second or third degree burn to five percent (5%) or more of a person's body; or

(B) A burn to a person's upper respiratory tract or laryngeal edema due to the inhalation of super-heated air.

(b) The reporting requirements of this subchapter are satisfied if:

(1) The report is made to the county sheriff;

(2) Within a city of the first class, the report is made to the municipal law enforcement agency; or

(3) The report is made under subdivision (a)(2) of this section to the local fire marshal, fire chief, assistant fire chief, or an officer of the fire department having jurisdiction.

(c) A physician, surgeon, hospital, druggist, or other person or entity required to report under this section that, in good faith, makes a report under this section has immunity from any civil or criminal liability that might otherwise be incurred or imposed with respect to the making of a report under this section.

History. Acts 1949, No. 258, § 1; A.S.A. 1947, § 42-501; Acts 2005, No. 1962, § 33; 2011, No. 270, § 1.

Amendments. The 2011 amendment subdivided (a) into (a)(1) and (a)(2); in the introductory paragraph of (a), inserted "to a person" and substituted "as provided in subsection (b) of this section if they treat or receive in the hospital a case of a" for "to the office of the county sheriff of the county all cases of"; substituted "wound when the knife or gunshot wound appears" for "wounds treated by them or received in the hospital when the wounds appear" in (a)(1); inserted (a)(2); rewrote (b); and added (c).

Subchapter 7 — Psychological Stress Tests

12-12-704. Results inadmissible.

CASE NOTES

Cited: Porter v. Ark. Dep't of Human Servs., 2011 Ark. App. 342, — S.W.3d — (2011).

Subchapter 8 — Missing Children

SECTION.

12-12-801. Report of missing child — Notation on records.

(a) When either a law enforcement officer or the Attorney General is notified by the parents, guardian, or other person having custody of a

child that the child is missing, the law enforcement officer or the Attorney General shall:

(1) Ensure that the missing child information is entered into the Missing Persons Information Clearinghouse within the Arkansas Crime Information Center under § 12-12-205 and the National Crime Information Center; and

(2) Within five (5) business days after being notified by the parents, guardian, or other person having custody of the child, inform by certified mail, return receipt requested, the Division of Vital Records of the Department of Health and the superintendent or school administrator of the school where the child was attending that the child has been reported as missing.

(b) The division shall enter on or attach to the child's birth certificate a notice that the child has been reported missing. The school the child was attending shall make or attach the same notation on the child's school records.

History. Acts 1987, No. 164, § 1; 1993, No. 116, § 1; 2011, No. 598, § 1.

Amendments. The 2011 amendment subdivided part of (a); inserted (a)(1); in (a)(2), substituted "notified by the parents, guardian, or other person having custody of the child" for "so notified" and inserted "or school administrator"; and inserted "the child was attending" in (b).

Subchapter 9 — Sex Offender Registration Act of 1997

12-12-901. Title.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Constitutional Issues. 37 A.L.R.6th 55.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

Court's Duty to Advise Sex Offender as to Sex Offender Registration Consequences or Other Restrictions Arising from Plea of Guilty, or to Determine that Offender Is Advised Thereof. 41 A.L.R.6th 141.

Application of *Apprendi v. New Jersey,* 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435, 2000 U.S. LEXIS 4304 (2000), and *Blakely v. Washington,* 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 2004 U.S. LEXIS 4573, 6 A.L.R. Fed. 2d 619 (2004), to Sex Offender Registration Statutes. 51 A.L.R.6th 139.

Validity and Applicability of State Requirement That Person Convicted or Indicted of Sex Offenses Be Subject to Electronic Location Monitoring, Including Use of Satellite or Global Positioning System. 57 A.L.R.6th 1.

Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions. 63 A.L.R.6th 351.

Validity, Construction and Application of State Sex Offender Registration Statutes Concerning Level of Classification — General Principles, Evidentiary Matters, and Assistance of Counsel. 64 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1.

Validity, Construction, and Application of Federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C.A. §§ 16901 et seq., its Enforcement Provision, 18 U.S.C.A § 2250, and Associated Regulations. 30 A.L.R. Fed. 2d 213.

CASE NOTES

Analysis

Illustrative Cases.
Sentence.

Illustrative Cases.

Appellant failed to state a claim for habeas corpus relief, because the trial court had to enter an amended judgment requiring him to register as a child or sexual offender under the Arkansas Sex Offender Registration Act of 1997, §§ 12-12-901 to 12-12-923, when he entered a plea of guilty to false imprisonment, theft of property, and domestic battery committed in the presence of a child. Justus v. Hobbs, 2013 Ark. 149, — S.W.3d — (2013).

Sentence.

Circuit court did not err in revoking the suspended sentence defendant received for failure to comply with the reporting requirements of this section, because the circuit court's finding that defendant failed to report his address was not clearly erroneous; defendant's parole officer visited the location on consecutive days and did not see defendant there. Wicks v. State, 2010 Ark. App. 499, 375 S.W.3d 769 (2010).

Circuit court did not err by denying defendant's motion to dismiss the state's petition to revoke the suspended sentence he received for failure to comply with the reporting requirements of the this section,

because defendant did not receive an illegal sentence; by pleading guilty, defendant admitted that he was required to register as a sex offender under the Act by virtue of his conviction for rape in California, and that defendant could have asserted a defense to the charge did not call into question the circuit court's authority to preside over the criminal matter, to accept his plea of guilty, and to sentence appellant accordingly. Wicks v. State, 2010 Ark. App. 499, 375 S.W.3d 769 (2010).

Circuit court did not have jurisdiction to entertain defendant's motion to dismiss the state's petition to revoke the suspended sentence he received for failure to comply with the reporting requirements of this section, because defendant failed to pursue postconviction relief under Ark. R. Crim. P. 37.1 within ninety days of the date of the entry of judgment; thus, he was barred from challenging his plea and conviction during a revocation proceeding. Wicks v. State, 2010 Ark. App. 499, 375 S.W.3d 769 (2010).

Cited: Morrison v. State, 2009 Ark. App. 681, 374 S.W.3d 8 (2009).

12-12-903. Definitions.

As used in this subchapter:

(1) "Adjudication of guilt" or other words of similar import mean a:

(A) Plea of guilty;

(B) Plea of nolo contendere;

(C) Negotiated plea;

(D) Finding of guilt by a judge; or

(E) Finding of guilt by a jury;

(2)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) "Administration of criminal justice" also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(3) "Aggravated sex offense" means an offense in the Arkansas Code substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C. § 2241 as it existed on March 1, 2003, which principally encompasses:

(A) Causing another person to engage in a sexual act:

(i) By using force against that other person; or

(ii) By threatening or placing or attempting to threaten or place that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

(B) Knowingly:

(i) Rendering another person unconscious and then engaging in a sexual act with that other person; or

(ii) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or similar substance and thereby:

(a) Substantially impairing the ability of that other person to appraise or control conduct; and

(b) Engaging or attempting to engage in a sexual act with that other person; or

(C) Crossing a state line with intent to:

(i) Engage or attempt to engage in a sexual act with a person who has not attained twelve (12) years of age;

(ii) Knowingly engage or attempt to engage in a sexual act with another person who has not attained twelve (12) years of age; or

(iii) Knowingly engage or attempt to engage in a sexual act under the circumstances described in subdivisions (3)(A) and (B) of this section with another person who has attained twelve (12) years of age but has not attained sixteen (16) years of age and is at least four (4) years younger than the alleged offender;

(4) "Change of address" or other words of similar import mean a change of residence or a change for more than thirty (30) days of temporary domicile, change of location of employment, education or training, or any other change that alters where a sex offender regularly spends a substantial amount of time;

(5) "Criminal justice agency" means a government agency or any subunit thereof which is authorized by law to perform the administration of criminal justice and which allocates more than one-half (½) of its annual budget to the administration of criminal justice;

(6) "Local law enforcement agency having jurisdiction" means the:

(A) Chief law enforcement officer of the municipality in which a sex offender:

(i) Resides or expects to reside;

(ii) Is employed; or

(iii) Is attending an institution of training or education; or

(B) County sheriff, if:

(i) The municipality does not have a chief law enforcement officer; or

(ii) A sex offender resides or expects to reside, is employed, or is attending an institution of training or education in an unincorporated area of a county;

(7) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminally sexual acts to a degree that makes the person a menace to the health and safety of other persons;

(8) "Personality disorder" means an enduring pattern of inner experience and behavior that:

(A) Deviates markedly from the expectation of the person's culture;

(B) Is pervasive and inflexible across a broad range of personal and social situations;

(C) Leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning;

(D) Is stable over time;

(E) Has its onset in adolescence or early adulthood;

(F) Is not better accounted for as a manifestation or consequence of another mental disorder; and

(G) Is not due to the direct physiological effects of a substance or a general medical condition;

(9) "Predatory" describes an act directed at a stranger or a person with whom a relationship has been established or promoted for the primary purpose of victimization of that person or individuals over whom that person has control;

(10)(A) "Residency" means the place where a person lives notwithstanding that there may be an intent to move or return at some future date to another place.

(B) "Residency" also includes:

(i) A place of employment;

(ii) A place of training;

(iii) A place of education; or

(iv) A temporary residence or domicile in which a person resides for an aggregate of five (5) or more consecutive days during a calendar year;

(11) "Sentencing court" means the judge of the court that sentenced the sex offender for the sex offense;

(12)(A) "Sex offense" includes, but is not limited to:

(i) The following offenses:

(a) Rape, § 5-14-103;

(b) Sexual indecency with a child, § 5-14-110;

(c) Sexual assault in the first degree, § 5-14-124;

(d) Sexual assault in the second degree, § 5-14-125;

(e) Sexual assault in the third degree, § 5-14-126;

(f) Sexual assault in the fourth degree, § 5-14-127;

(g) Incest, § 5-26-202;

(h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(i) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(j) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(l) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(m) Promoting prostitution in the first degree, § 5-70-104;

(n) Stalking, § 5-71-229, when ordered by the sentencing court to register as a sex offender;

(o) Indecent exposure, § 5-14-112, if a felony level offense;

(p) Exposing another person to human immunodeficiency virus, § 5-14-123, when ordered by the sentencing court to register as a sex offender;

(q) Kidnapping pursuant to § 5-11-102(a), when the victim is a minor and the offender is not the parent of the victim;

(r) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;

(s) Permitting abuse of a minor, § 5-27-221;

(t) Computer child pornography, § 5-27-603;

(u) Computer exploitation of a child, § 5-27-605;

(v) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;

(w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;

(x) Internet stalking of a child, § 5-27-306;

(y) Crime of video voyeurism, § 5-16-101, if a felony level offense;

(z) Voyeurism, § 5-16-102, if a felony level offense;

(aa) Any felony-homicide offense under § 5-10-101, § 5-10-102, or § 5-10-104 if the underlying felony is an offense listed in this subdivision (12)(A)(i); and

(bb) Sexually grooming a child, § 5-27-307;

(ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (12)(A)(i) of this section;

(iii) An adjudication of guilt for an offense of the law of another state:

(a) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or

(b) When that adjudication of guilt requires registration under another state's sex offender registration laws;

(iv) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (12)(A);

(v)*(a)* An adjudication of guilt for an offense in any federal court, the District of Columbia, a United States territory, a federally recognized Indian tribe, or for a military offense:

(1) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or

(2) When the adjudication of guilt requires registration under sex offender registration laws of another state or jurisdiction.

(b) If the conviction was for a violation of:

(1) 18 U.S.C. § 2252C;

(2) 18 U.S.C. § 2424; or

(3) 18 U.S.C. § 2425; or

(vi) An adjudication of guilt for an offense requiring registration under the laws of Canada, the United Kingdom, Australia, New Zealand, or any other foreign country where an independent judiciary enforces a right to a fair trial during the year in which the conviction occurred.

(B)(i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (12)(A)(i) of this section.

(ii) This authority applies to sex offenses enacted, renamed, or amended at a later date by the General Assembly unless the General Assembly expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter;

(13)(A) "Sex offender" means a person who is adjudicated guilty of a sex offense or acquitted on the grounds of mental disease or defect of a sex offense.

(B) Unless otherwise specified, "sex offender" includes those individuals classified by the court as a sexually dangerous person;

(14) "Sexually violent offense" means any state, federal, tribal, or military offense which includes a sexual act as defined in 18 U.S.C. §§ 2241 and 2242 as they existed on March 1, 2003, with another person if the offense is nonconsensual regardless of the age of the victim; and

(15)(A) "Sexually dangerous person" means a person who has been adjudicated guilty or acquitted on the grounds of mental disease or defect of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(B) A person previously classified as a sexually violent predator is now considered a sexually dangerous person.

History. Acts 1997, No. 989, § 3; 1999, No. 1353, § 1; 2001, No. 1496, § 3; 2001, No. 1743, § 2; 2003, No. 1390, § 4; 2003 (2nd Ex. Sess.), No. 21, §§ 1-3; 2007, No. 210, § 1; 2007, No. 394, § 2; 2009, No. 165, § 6; 2013, No. 172, § 1; 2013, No. 505, §§ 1, 2; 2013, No. 508, § 1; 2013, No. 1114, § 3.

Amendments. The 2013 amendment by No. 172 rewrote (10)(B).

The 2013 amendment by No. 505 substituted "a 'dangerous person'" for "'sexually violent predators'" in (13); redesignated former (15) as (15)(A); substituted "dangerous person" for "violent predator" in (15)(A); and added (15)(B).

The 2013 amendment by No. 508 rewrote (12)(A)(iii); and added (12)(A)(iv) and (12)(A)(v).

The 2013 amendment by No. 1114 added (12)(A)(i)(*bb*).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

CASE NOTES

Postconviction Relief Denied.

Denial of postconviction relief under Ark. R. Crim. P. 37.1 was proper, because correction of the judgment to reflect the requirements of the Sex Offender Registration Act of 1997 (SORA), §§ 12-12-901 to 12-12-923, did not demonstrate error so fundamental as to render the judgment void and subject to collateral attack pursuant to Ark. R. Crim. P. 37.1; since the petitioner pled guilty to false imprisonment in the first degree of a minor victim, which was a designated crime at the time he was sentenced pursuant to subdivision (12)(A)(i)(*r*) of this section, he was subject to SORA requirements regardless of whether it was reflected on the original judgment. Justus v. State, 2012 Ark. 91, — S.W.3d — (2012).

Appellant failed to state a claim for habeas corpus relief, because the trial court had to enter an amended judgment requiring him to register as a child or sexual offender under this section when he entered a plea of guilty to false imprisonment, theft of property, and domestic

battery committed in the presence of a child. Justus v. Hobbs, 2013 Ark. 149, — S.W.3d — (2013).

12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.

(a)(1)(A) A person is guilty of a Class C felony who:

(i) Fails to register or verify registration as required under this subchapter;

(ii) Fails to report a change of address, employment, education, or training as required under this subchapter;

(iii) Refuses to cooperate with the assessment process as required under this subchapter; or

(iv) Files false paperwork or documentation regarding verification, change of information, or petitions to be removed from the registry.

(B)(i) Upon conviction, a sex offender who fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2) is guilty of a Class C felony.

(ii) If a sex offender fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2), as soon as administratively feasible the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall contact the local law enforcement agency having jurisdiction to report the violation of subdivision (a)(1)(B)(i) of this section.

(2) It is an affirmative defense to prosecution if the person:

(A) Delayed reporting a change in address because of:

(i) An eviction;

(ii) A natural disaster; or

(iii) Any other unforeseen circumstance; and

(B) Provided the new address to the Arkansas Crime Information Center in writing no later than five (5) business days after the person establishes residency.

(b) Any agency or official subject to reporting requirements under this subchapter that knowingly fails to comply with the reporting requirements under this subchapter is guilty of a Class B misdemeanor.

History. Acts 1997, No. 989, § 11; 1999, No. 1353, § 2; 2001, No. 1743, § 3; 2006 (1st Ex. Sess.), No. 4, § 1; 2007, No. 394, § 3; 2013, No. 172, § 2.

Amendments. The 2013 amendment added (a)(1)(A)(iv).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Imposing Criminal Penalties for Failure to Register as Required Under Sex Offender or Other Criminal Registration Statutes. 33 A.L.R.6th 91.

Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions. 63 A.L.R.6th 351.

Validity, Construction and Application

of State Sex Offender Registration Statutes Concerning Level of Classification — General Principles, Evidentiary Matters, and Assistance of Counsel. 64 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1.

CASE NOTES

Analysis

In General.
Construction With Other Law.
Evidence.

In General.

Trial court did not utilize defendant's failure to register as a sex and child offender as an additional ground to support the revocation of his suspended sentence because the trial court merely entered a judgment declaring defendant guilty of that charge and pronounced a prison sentence on the registration violation for which he was originally given a suspended sentence; imposition of the sentence was separate and apart from the revocation and was well within the discretion of the trial court. Lowe v. State, 2010 Ark. App. 284, — S.W.3d — (2010).

Construction With Other Law.

Trial court did not clearly err in finding that defendant made no effort to comply with sexual-offender registration requirements. Therefore, the trial court properly revoked defendant's suspended sentence. Muldrew v. State, 2012 Ark. App. 568, — S.W.3d — (2012).

Evidence.

Defendant's conviction for the failure to register as a sex offender, or failure to report a change of address, in violation of this section was appropriate because the evidence supported a legitimate inference that he lied when he claimed to continue to live at a residence. The only evidence offered on his behalf was the allegation that he continued to live at the residence without furniture or water, while he allowed the grass to become overgrown. Morrison v. State, 2009 Ark. App. 681, 374 S.W.3d 8 (2009).

Probation of defendant, a registered sex offender was properly revoked for failing to comply with sex offender registration and reporting requirements, as required by this section, because defendant admitted that he was told that he could not live at a residential care facility which abutted a daycare but he did not move or provide another address for sex offender registry. Gray v. State, 2010 Ark. App. 159, — S.W.3d — (2010).

During defendant's trial for failure to register as a sex offender, the admission of a judgment and commitment order from a 2004 conviction on a charge of failure to register as a sex offender was neither prejudicial nor probative because the offense was a strict-liability offense; at worst, the evidence could be viewed as irrelevant or cumulative. Reed v. State, 2012 Ark. App. 225, — S.W.3d — (2012).

Defendant's convictions for failure to comply with registration and reporting requirements applicable to sex offenders and for residing within 2000 feet of a daycare facility as a level 4 sex offender were proper where the evidence supported a finding that he resided in a particular trailer that was shown to be within 2000 feet of a daycare facility because: (1) there was evidence that the trailer's previous resident had moved out approximately two months earlier and that the utilities for the trailer had been reestablished in defendant's name; (2) men's clothing and toiletries were found in the trailer, as were prescription-medication bottles bearing defendant's name; (3) the owner of the trailer admitted that defendant had approached him three times about renting the trailer; (4) defendant's father admitted that defendant had intended to move to the trailer; and (5) defendant had a key to the trailer when arrested. Although defendant argued he was only in the trailer to do repair work, no evidence of repair work was observed in the trailer. Green v. State, 2013 Ark. App. 63, — S.W.3d — (2013).

12-12-905. Applicability.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutory Requirement that Person Convicted of Sexual Offense in Other Jurisdiction Register or Be Classified as Sexual Offender in Forum State. 34 A.L.R.6th 171.

CASE NOTES

In General.

Defendant was properly convicted of knowingly failing to register as a sex offender under 18 U.S.C.S. § 2250 because he was subject to the registration requirements under Haw. Rev. Stat. § 846E-2(a) upon his Hawaii sex offense conviction and he had a duty to re-register when he re-entered Arkansas pursuant to this section and § 12-12-906. United States v. Brewer, 628 F.3d 975 (8th Cir. 2010).

12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.

(a)(1)(A)(i) At the time of adjudication of guilt, the sentencing court shall enter on the judgment and commitment or judgment and disposition form that the offender is required to register as a sex offender and shall indicate whether the:

(a) Offense is an aggravated sex offense;

(b) Sex offender has been adjudicated guilty of a prior sex offense under a separate case number; or

(c) Sex offender has been classified as a sexually dangerous person.

(ii) If the sentencing court finds the offender is required to register as a sex offender, then at the time of adjudication of guilt the sentencing court shall require the sex offender to complete the sex offender registration form prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908 and shall forward the completed sex offender registration form to the Arkansas Crime Information Center.

(B)(i) The Department of Correction shall ensure that a sex offender received for incarceration has completed the sex offender registration form.

(ii) If the Department of Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(C)(i) The Department of Community Correction shall ensure that a sex offender placed on probation or another form of community supervision has completed the sex offender registration form.

(ii) If the Department of Community Correction cannot confirm that the sex offender has completed the sex offender registration form, the Department of Community Correction shall require the sex offender to complete the sex offender registration form upon intake, release, or discharge.

(D)(i) The Arkansas State Hospital shall ensure that the sex offender registration form has been completed for any sex offender found not guilty by reason of insanity and shall arrange an evaluation by Community Notification Assessment.

(ii) If the Arkansas State Hospital cannot confirm that the sex offender has completed the sex offender registration form, the Arkansas State Hospital shall ensure that the sex offender registration form is completed for the sex offender upon intake, release, or discharge.

(2)(A) A sex offender who moves to or returns to this state from another jurisdiction and who would be required to register as a sex offender in the jurisdiction in which he or she was adjudicated guilty or delinquent of a sex offense shall register with the local law enforcement agency having jurisdiction within seven (7) calendar days after the sex offender moves to a municipality or county of this state.

(B)(i) Any person living in this state who would be required to register as a sex offender in the jurisdiction in which he or she was adjudicated guilty or delinquent of a sex offense shall register as a sex offender in this state whether living, working, or attending school or other training in Arkansas.

(ii) A nonresident worker or student who enters the state shall register in compliance with the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, as it existed on January 1, 2007.

(C) A sex offender sentenced and required to register outside of Arkansas shall:

(i)*(a)* Submit to assessment by Community Notification Assessment if he or she is at least eighteen (18) years of age at the time he or she enters this state to live, work, or attend school.

(b) If he or she is under the age of eighteen (18) at the time he or she enters this state to live, work, or attend school, he or she shall submit to assessment by the UAMS Family Treatment Program or other agency or entity authorized to conduct juvenile sex offender assessments;

(ii) Provide a deoxyribonucleic acid (DNA) sample if a sample is not already accessible to the State Crime Laboratory; and

(iii)*(a)* Pay the mandatory fee of two hundred fifty dollars ($250) to be deposited into the DNA Detection Fund established by § 12-12-1119 within ninety (90) days from the date of registration.

(b) Failure to pay the fee required under subdivision (a)(2)(C)(iii)(*a*) of this section is a Class A misdemeanor.

(b)(1) The registration file of a sex offender who is confined in a correctional facility or serving a commitment following acquittal on the grounds of mental disease or defect shall be inactive until the registration file is updated by the department responsible for supervision of the sex offender.

(2) Immediately prior to the release or discharge of a sex offender or immediately following a sex offender's escape or his or her absconding

from supervision, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall update the registration file of the sex offender who is to be released or discharged or who has escaped or has absconded from supervision.

(c)(1)(A) When registering a sex offender as provided in subsection (a) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall:

(i) Inform the sex offender of the duty to submit to assessment and to register and obtain the information required for registration as described in § 12-12-908;

(ii) Inform the sex offender that if the sex offender changes residency within the state, the sex offender shall give the new address and place of employment, education, higher education, or training to the Arkansas Crime Information Center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(iii)*(a)* Inform the sex offender that if the sex offender changes residency to another state or enters another state to work or attend school, the sex offender must also register in that state regardless of permanent residency.

(b) The sex offender shall register the new address and place of employment, education, higher education, or training with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state;

(iv) Obtain fingerprints, palm prints, and a photograph of the sex offender if these have not already been obtained in connection with the offense that triggered registration;

(v) Obtain a deoxyribonucleic acid (DNA) sample if one has not already been provided;

(vi) Require the sex offender to complete the entire registration process, including, but not limited to, requiring the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been explained;

(vii) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(viii) Inform a sex offender who has been granted probation that failure to comply with the provisions of this subchapter may be grounds for revocation of the sex offender's probation; and

(ix) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(a) Verify registration and obtain the information required for registration verification as described in subsections (g) and (h) of this section; and

(b) Ensure that the information required for reregistration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction.

(B)(i) Any offender required to register as a sex offender must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registering if a sample has not already been provided to the State Crime Laboratory.

(ii) Any offender required to register as a sex offender who is entering the State of Arkansas must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample, upon registration and must pay the mandatory fee of two hundred fifty dollars ($250) to be deposited into the DNA Detection Fund established by § 12-12-1119.

(2) When updating the registration file of a sex offender, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall:

(A) Review with the sex offender the duty to register and obtain current information required for registration as described in § 12-12-908;

(B) Review with the sex offender the requirement that if the sex offender changes address within the state, the sex offender shall give the new address to the center in writing no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address;

(C) Review with the sex offender the requirement that if the sex offender changes address to another state, the sex offender shall register the new address with the center and with a designated law enforcement agency in the new state not later than three (3) business days after the sex offender establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement;

(D) Require the sex offender to read and sign a form stating that the duty of the sex offender to register under this subchapter has been reviewed;

(E) Inform the sex offender that if the sex offender's address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall give the new address to the center in writing no later than three (3) business days after the sex offender establishes residency;

(F) Review with the sex offender the consequences of failure to provide any information required by subdivision (b)(2) of this section;

(G) Inform a sex offender subject to lifetime registration under § 12-12-919 of the duty to:

(i) Verify registration and report the information required for registration verification as described in subsections (g) and (h) of this section; and

(ii) Ensure that the information required for registration verification under subsections (g) and (h) of this section is provided to the local law enforcement agency having jurisdiction; and

(H) Review with a sex offender subject to lifetime registration under § 12-12-919 the consequences of failure to verify registration under § 12-12-904.

(d) When registering or updating the registration file of a sexually dangerous person, in addition to the requirements of subdivision (c)(1) or (2) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall obtain documentation of any treatment received for the mental abnormality or personality disorder of the sexually dangerous person.

(e) Any sex offender working, enrolled, or volunteering in a public or private elementary, secondary or postsecondary school, or institution of training shall notify the center of that status and shall register with the local law enforcement agency having jurisdiction over that campus.

(f)(1) An offender required to register pursuant to this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the sex offender; or

(B) Necessary to effect the exercise of the religion of the sex offender.

(2) The change in the sex offender's name shall be reported to the Director of the Arkansas Crime Information Center within ten (10) calendar days after the change in name.

(3) A violation of this subsection is a Class C felony.

(g)(1) Except as provided in subsection (h) of this section, a sex offender subject to lifetime registration under § 12-12-919 shall report in person every six (6) months after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sex offender, and the determination shall be consistent with the reporting requirements of subdivision (g)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sex offender:

(A) Name;

(B) Social security number;

(C) Age;

(D) Race;

(E) Gender;

(F) Date of birth;

(G) Height;

(H) Weight;

(I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sex offender owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police.

(iii) If the local law enforcement agency having jurisdiction cannot confirm that the sex offender's palm prints are contained in the automated palm print identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sex offender's palm prints; and

(b) Submit the palm prints to the center and to the Department of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sex offender at each registration verification and submit the photograph to the center;

(O) All computers or other devices with Internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender;

(Q) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet;

(R)(i) Passport.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any passport issued to the person by any country in the sex offender's name at each registration verification and submit the copy of any passport to the center;

(S)(i) Immigration documentation.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any immigration documents issued to the sex offender by any country at each registration verification and submit a copy of the documents to the center; and

(T)(i) Professional licenses and permits.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any federal, state, or local professional license or

permit issued to the sex offender at each registration verification and submit a copy of the documents to the center.

(4) If the sex offender is enrolled or employed at an institution of higher education in this state, the sex offender shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sex offender is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sex offender shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sex offender is a vessel, live-aboard vessel, or houseboat, the sex offender shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(7) If a person who is required to register as a sex offender owns an aircraft, the person shall provide the following information concerning the aircraft:

(A) The aircraft registration number;

(B) The manufacturer and model of the aircraft; and

(C) A description of the color scheme of the aircraft.

(h)(1) A sexually dangerous person subject to lifetime registration under § 12-12-919 shall report in person every ninety (90) days after registration to the local law enforcement agency having jurisdiction to verify registration.

(2) The local law enforcement agency having jurisdiction may determine the appropriate times and days for reporting by the sexually dangerous person, and the determination shall be consistent with the reporting requirements of subdivision (h)(1) of this section.

(3) Registration verification shall include reporting any change to the following information concerning the sexually dangerous person:

(A) Name;

(B) Social security number;

(C) Age;

(D) Race;

(E) Gender;

(F) Date of birth;

(G) Height;

(H) Weight;

(I) Hair and eye color;

(J)(i) Address of any permanent residence and address of any current temporary residence within this state or out of this state, including a rural route address and a post office box.

(ii) A post office box shall not be provided in lieu of a physical residential address;

(K) Date and place of any employment;

(L) Vehicle make, model, color, and license tag number that the sexually dangerous person owns, operates, or to which he or she has access;

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually dangerous person's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually dangerous person's fingerprints; and

(b) Submit the fingerprints to the center and to the Department of Arkansas State Police.

(iii) If the local law enforcement agency having jurisdiction cannot confirm that the sexually violent predator's palm prints are contained in the automated palm print identification system, the local law enforcement agency having jurisdiction shall:

(a) Take the sexually violent predator's palm prints; and

(b) Submit the palm prints to the center and to the Department of Arkansas State Police;

(N)(i) Photograph.

(ii) The local law enforcement agency having jurisdiction shall take a photograph of the sexually dangerous person at each registration verification and submit the photograph to the center;

(O) All computers or other devices with Internet capability to which the sex offender has access;

(P) All email addresses used by the sex offender;

(Q) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet;

(R)(i) Passport.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any passport issued to the person by any country in the sexually violent predator's name at each registration verification and submit the copy of any passport to the center;

(S)(i) Immigration documentation.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any immigration documents issued to the sexually violent predator by any country at each registration verification and submit a copy of the documents to the center; and

(T)(i) Professional licenses and permits.

(ii) The local law enforcement agency having jurisdiction shall obtain a copy of any federal, state, or local professional license or permit issued to the sexually violent predator at each registration verification and submit a copy of the documents to the center.

(4) If the sexually dangerous person is enrolled or employed at an institution of higher education in this state, the sexually dangerous person shall also report to the local law enforcement agency having jurisdiction:

(A) The name and address of each institution of higher education where he or she is enrolled or employed, including each campus attended;

(B) The county where each campus is located; and

(C) His or her enrollment or employment status.

(5) If the place of residence of the sexually dangerous person is a motor vehicle, trailer, mobile home, modular home, or manufactured home, the sexually dangerous person shall report the following information concerning the motor vehicle, trailer, mobile home, modular home, or manufactured home:

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sexually dangerous person is a vessel, live-aboard vessel, or houseboat, the sexually dangerous person shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

(7) If a sexually violent predator who is required to register as a sexually violent predator owns an aircraft, the person shall provide the following information concerning the aircraft:

(A) The aircraft registration number;

(B) The manufacturer and model of the aircraft; and

(C) A description of the color scheme of the aircraft.

(i) After verifying the registration of a sex offender under subsection (g) of this section or a sexually dangerous person under subsection (h) of this section, the local law enforcement agency having jurisdiction shall file the verification with the center in accordance with § 12-12-909.

History. Acts 1997, No. 989, § 5; 1999, No. 1353, § 4; 2001, No. 202, §§ 1-3; 2001, No. 1089, § 1; 2001, No. 1743, § 5; 2003, No. 1185, § 18; 2003, No. 1265, § 4[3]; 2003 (2nd Ex. Sess.), No. 21, § 4; 2005, No. 1962, § 34; 2006 (1st Ex. Sess.), No. 4, § 3; 2007, No. 394, § 5; 2011, No. 143, §§ 1, 2; 2011, No. 1009, § 1; 2013, No. 172, § 3; 2013, No. 505, §§ 3–7; 2013, No. 508, §§ 2–8; 2013, No. 1129, §§ 2, 3.

A.C.R.C. Notes. As enacted, Acts 2011, No. 143, contained two sections desig-

nated as § 1.

Amendments. The 2011 amendment by No. 143 deleted "beginning April 7, 2006" following "of this section" in (g)(1); inserted (O) through (Q) in (g)(3) and (h)(3); inserted "of higher education where he or she is enrolled or employed" in (g)(4)(A) and (h)(4)(A); and deleted "Beginning on March 21, 2007" at the beginning of (h)(1).

The 2011 amendment by No. 1009 added (a)(2)(C)(iii)(*b*); and added "within ninety (90) days from the date of registration" to the end of (a)(2)(C)(iii)(*a*).

The 2013 amendment by No. 172 rewrote (a)(2)(A); inserted "or delinquent" in (a)(2)(B)(i); inserted "the Adam Walsh Child Protection and Safety Act of 2006" in (a)(2)(B)(ii); and rewrote (a)(2)(C)(i).

The 2013 amendment by No. 505 substituted "dangerous person" or "dangerous person's" for "violent predator" throughout the section; substituted "Community Notification Assessment" for "Sex Offender Screening and Risk Assessment" in (a)(1)(C)(i) and (a)(2)(C)(i).

The 2013 amendment by No. 508 inserted "palm prints" following "fingerprints" in (c)(1)(A)(iv) and added (g)(3)(M)(iii), (g)(3)(R)-(g)(3)(T) and (g)(7).

The 2013 amendment by No. 1129 substituted "ninety (90) days" for "three (3) months" in (h)(1); and, in (i), deleted "Within three (3) days from the beginning and substituted "file the verification with the center in accordance with § 12-12-909" for "report by written or electronic means all information obtained from or provided by the sex offender or sexually violent predator to the center."

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statute Including "Sexually Motivated Offenses" Within Definition of Sex Offense for Purposes of Sentencing or Classification of Defendant as Sex Offender. 30 A.L.R.6th 373.

Validity, Construction, and Application of State Statutes Imposing Criminal Penalties for Failure to Register as Required Under Sex Offender or Other Criminal Registration Statutes. 33 A.L.R.6th 91.

Validity, Construction, and Application of State Statutory Requirement that Person Convicted of Sexual Offense in Other Jurisdiction Register or Be Classified as Sexual Offender in Forum State. 34 A.L.R.6th 171.

Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions. 63 A.L.R.6th 351.

Validity, Construction and Application of State Sex Offender Registration Statutes Concerning Level of Classification — General Principles, Evidentiary Matters, and Assistance of Counsel. 64 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims for Downward Departure. 66 A.L.R.6th 1.

Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Claims Challenging Upward Departure. 67 A.L.R.6th 1.

CASE NOTES

Analysis

Postconviction Relief Denied.
Requirement to Register.
Sentence.

Postconviction Relief Denied.

Denial of postconviction relief under Ark. R. Crim. P. 37.1 was proper, because correction of the judgment to reflect the requirements of the Sex Offender Registration Act of 1997 (SORA), §§ 12-12-901 to 12-12-923, did not demonstrate error so fundamental as to render the judgment void and subject to collateral attack pursuant to Ark. R. Crim. P. 37.1; since the petitioner pled guilty to false imprisonment in the first degree of a minor victim, which was a designated crime at the time he was sentenced pursuant to § 12-12-903(12)(A)(i)(*r*), he was subject to SORA requirements regardless of whether it was

reflected on the original judgment. Justus v. State, 2012 Ark. 91, — S.W.3d — (2012).

Appellant failed to state a claim for habeas corpus relief, because the trial court was required by subsection (a) of this section to enter an amended judgment ordering him to register as a child or sexual offender when he entered a plea of guilty to false imprisonment, theft of property, and domestic battery committed in the presence of a child. Justus v. Hobbs, 2013 Ark. 149, — S.W.3d — (2013).

Requirement to Register.

Defendant was properly convicted of knowingly failing to register as a sex offender under 18 U.S.C.S. § 2250 because he was subject to the registration requirements under Haw. Rev. Stat. § 846E-2(a) upon his Hawaii sex offense conviction and he had a duty to re-register when he re-entered Arkansas pursuant to § 12-12-905 and this section. United States v. Brewer, 628 F.3d 975 (8th Cir. 2010).

Sentence.

Circuit court did not err by denying defendant's motion to dismiss the state's petition to revoke the suspended sentence he received for failure to comply with the reporting requirements of this section, because defendant did not receive an illegal sentence; by pleading guilty, defendant admitted that he was required to register as a sex offender under the Act by virtue of his conviction for rape in California, and that defendant could have asserted a defense to the charge did not call into question the circuit court's authority to preside over the criminal matter, to accept his plea of guilty, and to sentence appellant accordingly. Wicks v. State, 2010 Ark. App. 499, 375 S.W.3d 769 (2010).

12-12-907. Report to Arkansas Crime Information Center — Report to law enforcement agency.

(a)(1) Within three (3) days after registering or updating the registration file of a sex offender, the Department of Correction, the Department of Community Correction, the Department of Human Services, the sentencing court, or the local law enforcement agency having jurisdiction shall report, by written or electronic means, all information obtained from the sex offender and regarding the sex offender to the Arkansas Crime Information Center.

(2) The center shall immediately enter the information into its record system for maintenance in a central registry and notify the local law enforcement agency having jurisdiction.

(3) The center will share information with the National Sex Offender Public Registry.

(b)(1)(A) No later than ten (10) days after release from incarceration or after the date of sentencing, a sex offender shall report to the local law enforcement agency having jurisdiction and update the information in the registration file.

(B) If the sex offender is not already registered, the local law enforcement agency having jurisdiction shall register the sex offender in accordance with this subchapter.

(2) Within three (3) days after registering a sex offender or receiving updated registry information on a sex offender, the local law enforcement agency having jurisdiction shall report, by written or electronic means, all information obtained from the sex offender to the center.

(3) The center shall verify the address of a sexually dangerous person on a quarterly basis and the address of all other sex offenders on a semiannual basis.

(4) The center shall have access to the offender tracking systems of the Department of Correction and the Department of Community Correction to confirm the location of registrants.

History. Acts 1997, No. 989, § 6; 1999, No. 1353, § 5; 2001, No. 1743, § 6; 2013, No. 505, § 8; 2013, No. 508, § 9.

Amendments. The 2013 amendment by No. 505 substituted "a sexually dangerous person" for "sexually violent predator" in (b)(3).

The 2013 amendment by No. 508 substituted "National Sex Offender Public Registry" for "National Sex Offender Registry" in (a)(3).

12-12-908. Registration format — Requirements.

(a) The Director of the Arkansas Crime Information Center shall prepare the format for registration as required in subsection (b) of this section and shall provide instructions for registration to each organized full-time municipal police department, county sheriff's office, the Department of Correction, the Department of Community Correction, the Department of Human Services, and the Administrative Office of the Courts.

(b) The registration file required by this subchapter shall include:

(1) The sex offender's full name and all aliases that the sex offender has used or under which the sex offender has been known;

(2) Date of birth;

(3) Sex;

(4) Race;

(5) Height;

(6) Weight;

(7) Hair and eye color;

(8) Address of any temporary residence;

(9) Anticipated address of legal residence;

(10) Driver's license number or state identification number, if available;

(11) Social security number;

(12) Place of employment, education, or training;

(13) Photograph, if not already obtained;

(14) Fingerprints, if not already obtained;

(15) Date of arrest, arresting agency, offense for which convicted or acquitted, and arrest tracking number for each adjudication of guilt or acquittal on the grounds of mental disease or defect;

(16) A brief description of the crime or crimes for which registration is required;

(17) The registration status of the sex offender as a sexually dangerous person, aggravated sex offender, or sex offender;

(18) A statement in writing signed by the sex offender acknowledging that the sex offender has been advised of the duty to register imposed by this subchapter;

(19) All computers or other devices with Internet capability to which the sex offender has access;

(20) All email addresses used by the sex offender;

(21) All user names, screen names, or instant message names that are used by the sex offender to communicate in real time with another person using the Internet; and

(22) Any other information that the center deems necessary, including without limitation:

(A) Criminal and corrections records;

(B) Nonprivileged personnel records;

(C) Treatment and abuse registry records; and

(D) Evidentiary genetic markers.

(c) Certain information such as social security number, driver's license number, employer, email addresses, user names, screen names, or instant message names, information that may lead to identification of the victim, and other similar information may be excluded from the information that is released during the course of notification.

History. Acts 1997, No. 989, § 7; 1999, No. 1353, § 6; 2001, No. 1743, § 7; 2011, No. 143, § 1[3]; 2013, No. 505, § 9.

A.C.R.C. Notes. As enacted, Acts 2011, No. 143, contained two sections designated as § 1.

Amendments. The 2011 amendment inserted (b)(19) through (21) and redesignated the remaining subdivisions accordingly; and, in (c), inserted "email addresses, user names, screen names, or instant message names" and substituted "other similar information" for "the like."

The 2013 amendment substituted "dangerous person" for "violent predator" in (b)(17).

12-12-909. Verification form — Change of address.

(a)(1) A person required to register as a sex offender shall verify registration every six (6) months after the person's initial registration date during the period of time in which the person is required to register.

(2)(A)(i) The verification shall be done in person at a local law enforcement agency having jurisdiction at which time the person shall sign and date a Sex Offender Acknowledgment Form in which a law enforcement officer shall also witness and sign.

(ii) The Sex Offender Acknowledgment Form shall state the date of verification as well as a date certain that the person is required to return in person to a specific local law enforcement agency having jurisdiction to verify his or her address.

(B) The Sex Offender Acknowledgement Form shall be uniform and created by the Arkansas Crime Information Center.

(C) The local law enforcement agency having jurisdiction shall file the verification of registration electronically with the center.

(3) If the person lives in a jurisdiction that does not have a local law enforcement agency having jurisdiction that is able to electronically file the verification, the verification shall be done by certified mail in the following manner:

(A) The center shall mail a nonforwardable verification form to the last reported address of the person by certified mail;

(B)(i) The person shall return the verification form in person to the local law enforcement agency having jurisdiction within ten (10) days after receipt of the verification form.

(ii) Within three (3) days after receipt of the verification form, the local law enforcement agency having jurisdiction shall forward the verification form to the center;

(C) The verification form shall be signed by the person and state that the person still resides at the address last reported to the center; and

(D) If the person fails to return the verification form to the local law enforcement agency having jurisdiction within ten (10) days after receipt of the verification form, the person is in violation of this subchapter.

(4) If the person changes his or her address without notice or fails to return the verification form if he or she is allowed to do so by mail, notification shall be sent to law enforcement and supervising parole or probation authorities, and notice may be posted on the Internet until proper reporting is again established or the person is incarcerated.

(5) Subdivision (a)(1) of this section applies to a person required to register as a sexually dangerous person, except that the person shall verify the registration every ninety (90) days after the date of the initial release or commencement of parole.

(b)(1)(A) Before a change of address within the state, a sex offender shall report the change of address to the local law enforcement agency having jurisdiction no later than ten (10) days before the sex offender establishes residency or is temporarily domiciled at the new address.

(B) Upon receipt of a report of a change of address as described in subdivision (b)(1)(A) of this section, the local law enforcement agency having jurisdiction shall report the change of address to the center.

(2) When a change of address within the state is reported to the center, the center shall immediately report the change of address to the local law enforcement agency having jurisdiction where the sex offender expects to reside.

(c)(1) Before a change of address to another state, a sex offender shall register the new address with the center and with a designated law enforcement agency in the state to which the sex offender moves not later than ten (10) days before the sex offender establishes residence or is temporarily domiciled in the new state if the new state has a registration requirement.

(2) When a change of address to another state is reported to the center, the center shall immediately notify the law enforcement agency with which the sex offender must register in the new state if the new state has a registration requirement.

(d) The center may require a sex offender to report a change of address through the local law enforcement agency having jurisdiction.

History. Acts 1997, No. 989, § 8; 2001, No. 1743, § 8; 2007, No. 394, § 6; 2011, No. 64, § 1; 2013, No. 505, § 10.

Amendments. The 2011 amendment rewrote (a); added (b)(1)(B); substituted "local law enforcement having jurisdiction" for "the center" in (b)(1)(A); and, in (c)(1), substituted "sex offender" for "person" and "the sex offender" for "such person."

The 2013 amendment substituted "dangerous person" for "violent predator" in (a)(5).

12-12-910. Fine.

(a) The sentencing court shall assess at the time of sentencing a mandatory fine of two hundred fifty dollars ($250) on any person who is required to register under this subchapter.

(b)(1) A person who relocates to this state and was convicted of an offense in another state that requires registration in this state shall pay a fee of two hundred fifty dollars ($250) within ninety (90) days from the date of registration.

(2)(A) A person who fails to pay the fee required under subdivision (b)(1) of this section upon conviction is guilty of a Class A misdemeanor.

(B) The person required to register has an affirmative defense to failure to pay a fee if he or she shows that his or her failure to pay the fee was not attributable to a:

(i) Purposeful refusal to obey the sentence of the court; or

(ii) Failure on the defendant's part to make a good faith effort to obtain the funds required for payment.

(c)(1) The fine provided in subsection (a) of this section and collected in circuit court, district court, or city court shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the Sex and Child Offenders Registration Fund as established by § 12-12-911.

(2) The fee provided in subsection (b) of this section shall be collected by the law enforcement agency having jurisdiction over the person's sex offender verification and shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the Sex and Child Offenders Registration Fund as established by § 12-12-911.

History. Acts 1997, No. 989, § 9; 2003, No. 1765, § 4; 2011, No. 812, § 1; 2013, No. 42, § 1.

Amendments. The 2011 amendment deleted "Unless finding that undue hardship would result" at the beginning of (a).

The 2013 amendment added present (b) and redesignated former (b) as (c)(1); and added (c)(2).

12-12-913. Disclosure.

(a)(1) Registration records maintained pursuant to this subchapter shall be open to any criminal justice agency in this state, the United States, or any other state.

(2) Registration records may also be open to government agencies authorized by law to conduct confidential background checks.

(3) Registration records shall be open to the Division of Medical Services of the Department of Human Services for Medicaid provider applicants under § 12-12-927.

(b) In accordance with guidelines promulgated by the Sex Offender Assessment Committee, local law enforcement agencies having jurisdiction shall disclose relevant and necessary information regarding sex offenders to the public when the disclosure of such information is necessary for public protection.

(c)(1)(A) The Sex Offender Assessment Committee shall promulgate guidelines and procedures for the disclosure of relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection.

(B) In developing the guidelines and procedures, the Sex Offender Assessment Committee shall consult with persons who, by experience or training, have a personal interest or professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole, public education, and community relations.

(2)(A) The guidelines and procedures shall identify factors relevant to a sex offender's future dangerousness and likelihood of reoffense or threat to the community.

(B) The guidelines and procedures shall also address the extent of the information to be disclosed and the scope of the community to whom disclosure shall be made as these factors relate to the:

(i) Level of the sex offender's dangerousness;

(ii) Sex offender's pattern of offending behavior; and

(iii) Need of community members for information to enhance their individual and collective safety.

(3) The Sex Offender Assessment Committee shall submit the proposed guidelines and procedures to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor for their review and shall report to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor every six (6) months on the implementation of this section.

(d)(1) A local law enforcement agency having jurisdiction that decides to disclose information pursuant to this section shall make a good faith effort to notify the public and residents at least fourteen (14) days before a sex offender is released or placed into the community.

(2) If a change occurs in a sex offender's release plan, this notification provision shall not require an extension of the release date.

(3) In conjunction with the notice provided under § 12-12-914, the Department of Correction and the Department of Human Services shall

make available to a local law enforcement agency having jurisdiction all information that the Department of Correction and the Department of Human Services have concerning the sex offender, including information on risk factors in the sex offender's history.

(e)(1) A local law enforcement agency having jurisdiction that decides to disclose information under this section shall make a good faith effort to conceal the identity of the victim or victims of the sex offender's offense.

(2) Except as provided in subsection (j) of this section, information under this section is not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(f) A local law enforcement agency having jurisdiction may continue to disclose information on a sex offender under this section for as long as the sex offender is required to be registered under this subchapter.

(g)(1) The State Board of Education and the State Board of Career Education shall promulgate guidelines for the disclosure to students and parents of information regarding a sex offender when such information is released to a local school district or institution of vocational training by a local law enforcement agency having jurisdiction.

(2) The Arkansas Higher Education Coordinating Board shall promulgate guidelines for the disclosure to students of information regarding a sex offender when information regarding a sex offender is released to an institution of higher education by a local law enforcement agency having jurisdiction.

(3) In accordance with guidelines promulgated by the State Board of Education, the board of directors of a local school district or institution of vocational training shall adopt a written policy regarding the distribution to students and parents of information regarding a sex offender.

(4) In accordance with guidelines promulgated by the Arkansas Higher Education Coordinating Board, the board of directors of an institution of higher education shall adopt a written policy regarding the distribution to students of information regarding a sex offender.

(h) Nothing in this section shall prevent a law enforcement officer from notifying members of the public about a person who may pose a danger to the public for a reason that is not enumerated in this subchapter.

(i) The medical records or treatment evaluations of a sex offender or sexually dangerous person are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(j)(1)(A) The following information concerning a registered sex offender who is classified as a level 3 or level 4 offender by the Community Notification Assessment shall be made public:

(i) The sex offender's complete name, as well as any alias;

(ii) The sex offender's date of birth;

(iii) Any sex offense to which the sex offender has pleaded guilty or nolo contendere or of which the sex offender has been found guilty by a court of competent jurisdiction;

(iv) The street name and block number, county, city, and zip code where the sex offender resides;

(v) The sex offender's race and gender;

(vi) The date of the last address verification of the sex offender provided to the Arkansas Crime Information Center;

(vii) The most recent photograph of the sex offender that has been submitted to the center;

(viii) The sex offender's parole or probation office;

(ix) The street name and block number, county, city, and zip code where the sex offender is employed;

(x) Any institution of higher education in which the sex offender is enrolled; and

(xi) The vehicle identification number and license plate number of any vehicle the sex offender owns or operates.

(B) If a registered sex offender was eighteen (18) years of age or older at the time of the commission of the sex offense that required registration under this subchapter and the victim of the sex offense was fourteen (14) years of age or younger and the registered sex offender is classified as a level 2 offender by the Community Notification Assessment, the following information concerning the registered sex offender shall be made public:

(i) The registered sex offender's complete name, as well as any alias;

(ii) The registered sex offender's date of birth;

(iii) Any sex offense to which the registered sex offender has pleaded guilty or nolo contendere or of which the registered sex offender has been found guilty by a court of competent jurisdiction;

(iv) The street name and block number, county, city, and zip code where the registered sex offender resides;

(v) The registered sex offender's race and gender;

(vi) The date of the last address verification of the registered sex offender provided to the center;

(vii) The most recent photograph of the registered sex offender that has been submitted to the center;

(viii) The registered sex offender's parole or probation office;

(ix) The street name and block number, county, city, and zip code where the sex offender is employed;

(x) Any institution of higher education in which the sex offender is enrolled; and

(xi) The vehicle identification number and license plate number of any vehicle the sex offender owns or operates.

(C) The center shall prepare and place the information described in subdivisions (j)(1)(A) and (B) of this section on the Internet home page of the State of Arkansas.

(2) The center may promulgate any rules necessary to implement and administer this subsection.

(k) Nothing in this subchapter shall be interpreted to prohibit the posting on the Internet or by other appropriate means of offender fact sheets for those sex offenders who are determined to be:

(1) High-risk or sexually dangerous persons, risk level 3 and level 4; or

(2) In noncompliance with the requirements of registration under rules and regulations promulgated by the Sex Offender Assessment Committee.

History. Acts 1997, No. 989, § 13; 1999, No. 1353, § 8; 2001, No. 1743, § 10; 2003, No. 330, §§ 1, 2; 2003 (2nd Ex. Sess.), No. 21, § 6; 2005, No. 1962, § 35; 2007, No. 147, § 1; 2007, No. 394, § 7; 2009, No. 165, § 7; 2013, No. 505, §§ 11 — 14; 2013, No. 508, §§ 10, 11; 2013, No. 1504, § 1.

Amendments. The 2013 amendment by No. 505 substituted "dangerous person" for "violent predator" in (i); substituted "Community Notification Assessment" for "Sex Offender Screening and Risk Assessment" in (j)(1)(A) and (j)(1)(B); and substituted "dangerous persons" for "violent predators" in (k)(1).

The 2013 amendment by No. 508 added (j)(1)(A)(ix) through (j)(1)(A)(xi) and (j)(1)(B)(ix) through (j)(1)(B)(xi).

The 2013 amendment by No. 1504 added (a)(3).

CASE NOTES

Sufficiency of Evidence.

Under this section and §§ 12-12-917 and 12-12-922, the evidence supported the sex offender's Level 2 assessment where his victim was outside the home and a Level 1 assessment only required notification inside the home and to local law enforcement, which was insufficient; the offender also indicated refusal to participate in sex-offender treatment. Gwaltney v. Sex Offender Assessment Comm., 2009 Ark. App. 668, — S.W.3d — (2009).

12-12-917. Evaluation protocol — Sexually dangerous persons — Juveniles adjudicated delinquent — Examiners.

(a)(1) The Sex Offender Assessment Committee shall develop an evaluation protocol for preparing reports to assist courts in making determinations whether or not a person adjudicated guilty of a sex offense should be considered a sexually dangerous person for purposes of this subchapter.

(2) The committee shall also establish qualifications for examiners and qualify examiners to prepare reports in accordance with the evaluation protocol.

(b)(1) The committee shall cause an assessment to be conducted on a case-by-case basis of the public risk posed by a sex offender or sexually dangerous person:

(A) Who is required to register under § 12-12-905 after August 1, 1997; and

(B) For whom the Arkansas Crime Information Center has no record of an assessment's being done and a risk level established subsequent to August 1, 1997.

(2)(A)(i) An adult offender convicted of an offense described in 42 U.S.C. § 14071 et seq., as it existed on March 1, 2003, Pub. L. No. 109-248, as it existed on January 1, 2007, or § 12-12-903(12) shall be assessed.

(ii)*(a)* Subject to subdivision (c)(1) of this section, the prosecuting attorney and any law enforcement agency shall furnish the file

relating to the offender to Community Notification Assessment at the Department of Correction within thirty (30) days of an offender's adjudication of guilt.

(b)(1) The prosecuting attorney shall make a copy of any relevant records concerning the offender and shall forward the copied relevant records to Community Notification Assessment within thirty (30) days of the adjudication.

(2) The relevant records include, but are not limited to:

(A) Arrest reports;

(B) Incident reports;

(C) Offender statements;

(D) Judgment and disposition forms;

(E) Medical records;

(F) Witness statements; and

(G) Any record considered relevant by the prosecuting attorney.

(B) A sex offender sentenced to life, life without parole, or death shall be assessed only if the sex offender is being considered for release.

(3) A sex offender currently in the state who has not been assessed and classified shall be identified by the center.

(4)(A) If a sex offender fails to appear for assessment, is aggressive, threatening, or disruptive to the point that Community Notification Assessment staff cannot proceed with the assessment process, or voluntarily terminates the assessment process after having been advised of the potential consequences:

(i) The sex offender shall be classified as a risk level 3 or referred to the Sex Offender Assessment Committee as a risk level 4; and

(ii) The parole or probation officer, if applicable, shall be notified.

(B) A sex offender has immunity for a statement made by him or her in the course of assessment with respect to prior conduct under the immunity provisions of § 16-43-601 et seq.

(C) Assessment personnel shall report ongoing child maltreatment as required under the Child Maltreatment Act, § 12-18-101 et seq.

(c)(1) To the extent permissible and under the procedures established by state and federal regulations, public agencies shall provide the committee access to all relevant records and information in the possession of public agencies or any private entity contracting with a public agency relating to the sex offender or sexually dangerous person under review.

(2) The records and information include, but are not limited to:

(A) Police reports;

(B) Statements of probable cause;

(C) Presentence investigations and reports;

(D) Complete judgments and sentences;

(E) Current classification referrals;

(F) Criminal history summaries;

(G) Violation and disciplinary reports;

(H) All psychological evaluations and psychiatric hospital reports;

(I) Sex offender or sexually dangerous person treatment program reports;

(J) Juvenile court records;

(K) Victim impact statements;

(L) Investigation reports to the Child Abuse Hotline, the Division of Children and Family Services of the Department of Human Services, and any entity contracting with the Department of Human Services for investigation or treatment of sexual or physical abuse or domestic violence; and

(M) Statements of medical providers treating victims of sex offenses indicating the extent of injury to the victim.

(d)(1) Records and information obtained under this section shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq., unless otherwise authorized by law.

(2)(A)(i) The sex offender or sexually dangerous person shall have access to records and information generated and maintained by the committee.

(ii) These records shall include any reports of the assessment and the tape of the interview but do not include restricted source documents of commercial psychological tests or working notes of staff.

(B)(i) Unless otherwise ordered by a court of competent jurisdiction, records and information generated by other agencies and obtained under this section shall not be available to the sex offender or sexually dangerous person except through the agency or individual having primary custody of the records.

(ii) Upon request, the sex offender shall be given a list of the records or information obtained.

(C) If the record or information generated contains the address of a victim or a person who has made a statement adverse to the sex offender or sexually dangerous person, the address shall be redacted and the sex offender or sexually dangerous person shall have access to records and information other than the identity and address.

(e) In classifying the sex offender into a risk level for the purposes of public notification under § 12-12-913, the committee, through its staff, shall review each sex offender or sexually dangerous person under its authority:

(1) Prior to the sex offender's release for confinement in a correctional facility;

(2) Prior to the release of a person who has been committed following an acquittal on the grounds of mental disease or defect;

(3) At the start of a sex offender's suspended imposition of sentence; or

(4) At the start of a sex offender's probation period.

(f)(1)(A) The committee shall issue the offender fact sheet to the local law enforcement agency having jurisdiction.

(B) The offender fact sheet is provided to assist the local law enforcement agency having jurisdiction in its task of community notification.

(2) The committee shall provide the Parole Board with copies of the offender fact sheet on inmates of the Department of Correction.

(3) The committee shall provide the Department of Community Correction with copies of the offender fact sheet on any sex offender under the Department of Community Correction's supervision.

(4)(A)(i) The offender fact sheet shall be prepared on a standard form for ease of transmission and communication.

(ii) The offender fact sheet shall be on an Internet-based application accessible to law enforcement, state boards, and licensing agencies.

(iii) The offender fact sheet of a sexually dangerous person or a sex offender found by the center to be in violation of the registration requirement shall be made available to the general public unless the release of the offender fact sheet, in the opinion of the committee based on a risk assessment, places an innocent individual at risk.

(B) The standard form shall include, but not be limited to:

(i) Registration information as required in § 12-12-908;

(ii) Risk level;

(iii) Date of deoxyribonucleic acid (DNA) sample;

(iv) Psychological factors likely to affect sexual control;

(v) Victim age and gender preference;

(vi) Treatment history and recommendations; and

(vii) Other relevant information deemed necessary by the committee or by professional staff performing sex offender assessments.

(5)(A) The committee shall ensure that the notice is complete in its entirety.

(B) A law enforcement officer shall notify the center if a sex offender has moved or is otherwise in violation of a registration requirement.

(6)(A) All material used in the assessment shall be kept on file in its original form for one (1) year.

(B) After one (1) year the file may be stored electronically.

(g)(1) In cooperation with the committee, the Department of Correction shall promulgate rules and regulations to establish the review process for assessment determinations.

(2)(A) The sex offender or sexually dangerous person may request an administrative review of the assigned risk level under the conditions stated and following the procedures indicated under § 12-12-922.

(B) The sex offender shall be notified of these rights and procedures in the documentation sent with the notification of risk level.

(h)(1)(A) A sex offender or sexually dangerous person may request the committee to reassess the assigned risk level of the sex offender or sexually dangerous person after five (5) years have elapsed since initial risk assessment by the committee and may renew that request one (1) time every five (5) years.

(B) In the request for reassessment, the sex offender or sexually dangerous person shall list the facts and circumstances that demonstrate that the sex offender no longer poses the same degree of risk to the community.

(2)(A) A local law enforcement agency having jurisdiction, the Department of Community Correction, or the Parole Board may request the committee to reassess a sex offender's assigned risk level at any time.

(B) In the request for reassessment, the local law enforcement agency having jurisdiction, the Department of Community Correction, or the Parole Board shall list the facts and circumstances that prompted the requested reassessment.

(3) The committee shall also take into consideration any subsequent criminal act by the sex offender or sexually dangerous person during a reassessment.

History. Acts 1997, No. 989, § 17; 1999, No. 1353, §§ 10, 11; 2001, No. 1743, § 12; 2003 (2nd Ex. Sess.), No. 21, § 8; 2005, No. 1962, §§ 36, 37; 2006 (1st Ex. Sess.), No. 4, § 5; 2007, No. 394, § 9; 2009, No. 758, § 25; 2013, No. 505, § 15.

Amendments. The 2013 amendment substituted "dangerous persons" for "violent predators" in the section heading; substituted "dangerous person" for "violent predator" and "Community Notification Assessment" for "Sex Offender Screening and Risk Assessment" throughout the section; substituted "dangerous person or" for "violent predator and" in (f)(4)(A)(iii); rewrote (h)(1)(A); and inserted "or sexually dangerous person" in (h)(1)(B).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Sex Offender Registration Statutes Concerning Level of Classification — Initial Classification Determination. 65 A.L.R.6th 1.

CASE NOTES

Substantial Evidence.

Under this section and §§ 12-12-913 and 12-12-922, the evidence supported the sex offender's Level 2 assessment where his victim was outside the home and a Level 1 assessment only required notification inside the home and to local law enforcement, which was insufficient; the offender also indicated refusal to participate in sex-offender treatment. Gwaltney v. Sex Offender Assessment Comm., 2009 Ark. App. 668, — S.W.3d — (2009).

12-12-918. Classification as sexually dangerous person.

(a)(1) In order to classify a person as a sexually dangerous person, a prosecutor may allege on the face of an information that the prosecutor is seeking a determination that the defendant is a sexually dangerous person.

(2)(A) If the defendant is adjudicated guilty, the court shall enter an order directing an examiner qualified by the Sex Offender Assessment Committee to issue a report to the sentencing court that recommends whether or not the defendant should be classified as a sexually dangerous person.

(B) Copies of the report shall be forwarded immediately to the prosecutor and to the defense attorney.

(C) The report shall not be admissible for purposes of sentencing.

(3) After sentencing, the court shall make a determination regarding the defendant's status as a sexually dangerous person.

(b)(1) In order for the examiner qualified by the committee to prepare the report:

(A) The defendant may be sent for evaluation to a facility designated by the Department of Correction; or

(B) The committee may elect to send an examiner to the local or regional detention facility.

(2) The cost of the evaluation shall be paid by the Department of Correction.

(c)(1) Should evidence be found in the course of any assessment conducted by the committee that a defendant appears to meet the criteria for being classified as a sexually dangerous person, the committee shall bring this information to the attention of the prosecutor, who will determine whether to file a petition with the court for the defendant to be classified as a sexually dangerous person.

(2) The sentencing court shall retain jurisdiction to determine whether a defendant is a sexually dangerous person for one (1) year after sentencing or for so long as the defendant remains incarcerated for the sex offense.

(d)(1) The judgment and commitment order should state whether the offense qualifies as an aggravated sex offense.

(2) Should the aggravated sex offense box not be checked on the commitment order, the court will be contacted by the committee and asked to furnish a written determination as to whether the offense qualifies as an aggravated sex offense.

History. Acts 1997, No. 989, § 18; 1999, No. 1353, § 12; 2001, No. 1743, § 13; 2003 (2nd Ex. Sess.), No. 21, § 9; 2013, No. 505, § 16.

Amendments. The 2013 amendment substituted "dangerous person" for "violent predator" throughout the section.

CASE NOTES

Cited: Green v. State, 2013 Ark. App. 63, — S.W.3d — (2013).

12-12-919. Termination of obligation to register.

(a) Lifetime registration is required for a sex offender who:

(1) Was found to have committed an aggravated sex offense;

(2) Was determined by the court to be or assessed as a Level 4 sexually dangerous person; or

(3) Has pleaded guilty or nolo contendere to or been found guilty of a second or subsequent sex offense under a separate case number, not multiple counts on the same charge.

(b)(1)(A)(i) Any other sex offender required to register under this subchapter may apply for an order terminating the obligation to register to the sentencing court fifteen (15) years after release from incarceration or other institution or fifteen (15) years after having

been placed on probation or any other form of community supervision by the court.

(ii) A sex offender sentenced in another state but permanently residing in Arkansas may apply for an order terminating the obligation to register to the court of the county in which the sex offender resides.

(B)(i) The court shall hold a hearing on the application at which the applicant and any interested persons may present witnesses and other evidence.

(ii) No less than twenty (20) days before the date of the hearing on the application, a copy of the application for termination of the obligation to register shall be served on:

(a) The prosecutor of the county in which the adjudication of guilt triggering registration was obtained if the sex offender was convicted in this state; or

(b) The prosecutor of the county where a sex offender resides if the sex offender was convicted in another state.

(iii) A copy also shall be served to the Arkansas Sex Offender Registry in the Arkansas Crime Information Center and to Sex Offender Screening and Risk Assessment at least twenty (20) days before the hearing.

(2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:

(A) The applicant placed on parole, supervised release, or probation has not been adjudicated guilty of a sex offense for a period of fifteen (15) years after the applicant was released from prison or other institution; and

(B) The applicant is not likely to pose a threat to the safety of others.

History. Acts 1997, No. 989, § 19; 1999, No. 1353, § 13; 2001, No. 1743, § 14; 2003 (2nd Ex. Sess.), No. 21, § 10; 2013, No. 172, § 4; 2013, No. 505, § 17; 2013, No. 1248, § 1.

Amendments. The 2013 amendment by No. 172 substituted "apply" for "make application" and "make an application" in (b)(1)(A)(i) and (b)(1)(A)(ii); and rewrote (b)(1)(B)(ii).

The 2013 amendment by No. 505 substituted "dangerous person" for "violent predator" in (a)(2).

The 2013 amendment by No. 1248 inserted "who" at the end of (a); substituted "Found" for "Was found" in (a)(1); in (a)(2), substituted "Determined" for "Was determined" and "to be or assessed as a Level 4 sexually" for "to be a sexually"; and substituted "Found to have been adjudicated guilty of" for "Has pleaded guilty or nolo contendere to or been found guilty of" in (a)(3).

CASE NOTES

Registration Requirements.

As the Arkansas Code Revision Commission substantively altered Act no. 21, Ark. Acts 2005 in its codification of subdivision (b)(2)(A) of this section, in a manner that changed its meaning, a probationer may apply to terminate his or her obligation to register as a sex offender 15 years after being placed on probation. Further, the probationer is entitled to relief upon a

showing by a preponderance of the evidence that he or she has not been adjudicated of a sex offense during that 15-year-time period and he or she is not likely to pose a threat to the safety of others. Harrell v. State, 2012 Ark. 421, — S.W.3d —, 2012 Ark. LEXIS 438 (Nov. 8, 2012).

12-12-922. Alternative procedure for sexually dangerous person evaluations — Administrative review of assigned risk level.

(a)(1) The alternative procedure under this section may be used for sexually dangerous person evaluations if information that was not available to the court at the time of trial emerges in the course of a sex offender evaluation.

(2)(A) Examiners qualified by the Sex Offender Assessment Committee shall include in the assessment of any sex offender convicted of a sex offense a review as to whether the frequency, repetition over time, severity of trauma to the victim, or established pattern of predatory behaviors suggests that the sex offender is likely to engage in future predatory sexual offenses.

(B) If a mental abnormality or personality disorder is suspected, a licensed psychologist or psychiatrist qualified by the committee may conduct further assessment to determine the presence or absence of a mental abnormality or personality disorder.

(C) If further assessment under subdivision (a)(2)(B) of this section is conducted by a licensed psychologist or psychiatrist qualified by the committee, the report of the further assessment shall be presented to the committee.

(b)(1)(A) A sex offender may challenge an assigned risk level by submitting a written request for an administrative review.

(B) As part of the request for an administrative review, the sex offender may request in writing copies of all documents generated by the examiners, a listing by document name and source of all documents that may be available from other agencies having custody of those documents, and a copy of the tape of the interview.

(2) The request for an administrative review shall be made in accordance with instructions provided on the risk level notification and within fifteen (15) days of receipt of the advisement of risk level notification to the sex offender by certified mail and first-class mail.

(3)(A) The basis of the request for administrative review shall be clearly stated and any documentary evidence attached.

(B) The basis for administrative review is:

(i) The rules and procedures were not properly followed in reaching a decision on the risk level of the sex offender;

(ii) Documents or information not available at the time of assessment have a bearing on the risk that the sex offender poses to the community; or

(iii) The assessment is not supported by substantial evidence.

(4) Unless a request for an administrative review is received by the committee within twenty (20) days of postmark of the advisement of

risk level notification sent to the sex offender sent by certified mail and first-class mail or delivered by personal service, an offender fact sheet shall be made available to law enforcement so that community notification may commence. Receipt of the advisement of risk level notification will be presumed within five (5) days of postmark of the advisement of risk level notification by both certified mail and first-class mail.

(5) If a request for an administrative review is received by the committee, the local law enforcement agency having jurisdiction may make community notification at the level upon which administrative review has been requested.

(6)(A) A member of the committee shall conduct the review and respond within thirty (30) days of receiving a request for an administrative review.

(B) If additional time is needed to obtain facts, the committee shall notify the sex offender requesting the review.

(7)(A)(i) The findings of the administrative review shall be sent to the sex offender by certified mail. Community notification at the risk level assigned in the administrative review shall commence five (5) calendar days after the postmark of the advisement of the findings of the administrative review.

(ii) Upon receipt of the findings, the sex offender has thirty (30) days to file a petition under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for judicial review in the Pulaski County Circuit Court or in the circuit court of the county where the sex offender resides or does business.

(B) The circuit court shall refuse to hear any appeal of an assigned risk level by a sex offender unless the circuit court finds that the administrative remedies available to the sex offender under this subsection have been exhausted.

(8)(A)(i) A copy of the petition for judicial review shall be served on the executive secretary of the committee in accordance with the Arkansas Rules of Civil Procedure.

(ii) When the petition for judicial review has been served on the executive secretary of the committee, a record of the committee's findings and copies of all records in its possession shall be furnished by the committee to the circuit court within thirty (30) days of service.

(B) The committee may ask the circuit court to seal statements of victims, medical records, and other items that could place third parties at risk of harm.

(9) A ruling by the circuit court on the petition for judicial review is considered a final judgment.

History. Acts 2003 (2nd Ex. Sess.), No. 21, § 12; 2005, No. 1962, § 39; 2006 (1st Ex. Sess.), No. 4, § 6; 2007, No. 394, § 10; 2011, No. 286, § 1; 2013, No. 505, §§ 18, 19; 2013, No. 1129, § 4.

Amendments. The 2011 amendment, in (b)(5), substituted "the local enforcement agency having jurisdiction" for "law enforcement" and "at the level upon which" for "only at the level immediately below the level upon which."

The 2013 amendment by No. 505 sub-

stituted "dangerous person" for "violent predator" in the section heading, and in (a)(1).

The 2013 amendment by No. 1129 inserted "administrative" in (b)(5).

CASE NOTES

Procedure.

Under §§ 12-12-913 and 12-12-917, and this section, the evidence supported the sex offender's Level 2 assessment where his victim was outside the home and a Level 1 assessment only required notification inside the home and to local law enforcement, which was insufficient; the offender also indicated refusal to participate in sex-offender treatment. Gwaltney v. Sex Offender Assessment Comm., 2009 Ark. App. 668, — S.W.3d — (2009).

12-12-923. Electronic monitoring of sex offenders.

(a)(1) Upon release from incarceration, a sex offender determined to be a sexually dangerous person whose crime was committed after April 7, 2006, is subject to electronic monitoring for a period of not less than ten (10) years from the date of the sex offender's release.

(2) Within three (3) days after release from incarceration, a sex offender subject to electronic monitoring under subdivision (a)(1) of this section shall:

(A) Report to the agency responsible under § 12-12-915 for supervising the sex offender; and

(B) Submit to the placement of electronic monitoring equipment upon his or her body.

(b) The agency responsible under § 12-12-915 for supervising the sex offender subject to electronic monitoring shall:

(1) Use a system that actively monitors and identifies the sex offender's location and timely reports or records his or her presence near or within a crime scene or in a prohibited area or his or her departure from specified geographic limitations; and

(2) Contact the local law enforcement agency having jurisdiction as soon as administratively feasible if the sex offender is in a prohibited area.

(c)(1)(A) Unless a sex offender subject to electronic monitoring is indigent, he or she is required to reimburse the supervising agency a reasonable fee to defray the supervision costs.

(B)(i)*(a)* A sex offender who claims to be indigent shall provide a completed certificate of indigency to the supervising agency.

(b) The supervising agency may at any time review and redetermine whether a sex offender is indigent.

(ii) The certificate of indigency shall:

(a) Be in a form approved by the supervising agency;

(b) Be executed under oath by the sex offender; and

(c) State in bold print that a false statement is punishable as a Class D felony.

(2)(A) The supervising agency shall determine the amount to be paid by a sex offender based on his or her financial means and ability to pay.

(B) However, the amount under subdivision (c)(2)(A) of this section shall not exceed fifteen dollars ($15.00) per day.

(d) A sex offender subject to electronic monitoring who violates subdivision (a)(2) of this section upon conviction is guilty of a Class C felony.

(e)(1) A person who knowingly alters, tampers with, damages, or destroys any electronic monitoring equipment worn by a sexually dangerous person under this section upon conviction is guilty of a Class C felony.

(2) Subdivision (e)(1) of this section does not apply to the owner of the electronic monitoring equipment or an agent of the owner performing ordinary maintenance or repairs to the electronic monitoring equipment.

History. Acts 2006 (1st Ex. Sess.), No. 4, § 7; 2013, No. 505, §§ 20, 21.

Amendments. The 2013 amendment substituted "dangerous person" for "violent predator" in (a)(1); and substituted "dangerous person under" for "violent predator pursuant to" in (e)(1).

RESEARCH REFERENCES

ALR. Validity and Applicability of State Requirement That Person Convicted or Indicted of Sex Offenses Be Subject to Electronic Location Monitoring, Including Use of Satellite or Global Positioning System. 57 A.L.R.6th 1.

12-12-924. Disclosure and notification concerning out-of-state sex offenders moving into Arkansas.

(a) A local law enforcement agency having jurisdiction where an out-of-state sex offender is moving or has moved may make immediate disclosure of the sex offender's registration in another state before the completion of a sex offender assessment assigning a community notification level.

(b) A local law enforcement agency having jurisdiction where an out-of-state individual is moving or has moved who has been convicted of an offense that would require registration as a sex offender in Arkansas may make immediate notification appropriate for public safety before the completion of a sex offender assessment assigning a community notification level.

History. Acts 2011, No. 100, § 1.

12-12-925. Travel outside of the United States.

(a) A person who is required to register as a sex offender under this subchapter must report at least twenty-one (21) days before traveling outside of the United States to the local law enforcement agency having jurisdiction that he or she intends to travel outside of the United States.

(b) The person making the report under this section must also report to the local law enforcement agency having jurisdiction:

(1) The dates of travel; and

(2) The foreign country, colony, territory, or possessions that the person will visit.

(c)(1) A local law enforcement agency receiving a report under this section shall immediately report the information to the Arkansas Crime Information Center.

(2) Upon receiving information from a local law enforcement agency under this section, the center shall immediately report the information to the National Sex Offender Public Registry and to the United States Marshals Service.

History. Acts 2013, No. 508, § 12.

12-12-926. Release of motor vehicle records by the Department of Finance and Administration.

(a) The Department of Finance and Administration may release to a law enforcement officer or agency information contained in a person's motor vehicle record if:

(1) The information is required for the law enforcement officer or agency to comply with this subchapter; and

(2) The use of the information by the law enforcement officer or agency is related to public safety.

(b) A law enforcement officer or agency that obtains a record from the department as provided in subsection (a) of this section may publicly disclose information contained in a person's motor vehicle record if the disclosure of the information is:

(1) Required by this subchapter; and

(2) Related to public safety.

(c) This section does not authorize a law enforcement officer or agency to publicly disclose the following information obtained from a motor vehicle record:

(1) A person's social security number; or

(2) A person's medical or disability information.

History. Acts 2013, No. 508, § 13.

12-12-927. Medicaid services by sex offender prohibited.

If a court has entered an order requiring a person to register as a sex offender or if the person is listed in the Federal Bureau of Investigation's National Sex Offender Registry, the United States Department of Justice Dru Sjodin National Sex Offender Public Website, or both, the person shall not provide goods or services under the Arkansas Medicaid Program.

History. Acts 2013, No. 1504, § 2.

Subchapter 10 — Criminal History Information and Reporting Standards

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Effective Dates. Acts 2011, No. 699, § 2: Mar. 24, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Juli's law is intended to protect Arkansans from heinous crimes; that rape is a heinous crime that can occur at any time; that the protections under Juli's Law will be enhanced by the addition of rape as a reportable crime; and because no time should be lost in providing this protection to the people of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 1460, § 17: Jan. 1, 2014. Effective date clause provided: "This act becomes effective on and after January 1, 2014."

12-12-1001. Definitions. [Effective January 1, 2014.]

As used in this subchapter:

(1)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) "Administration of criminal justice" also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(2) "Arrest tracking number" means a unique number assigned to an arrestee at the time of each arrest that is used to link that arrest to the final disposition of that charge;

(3) "Central repository" means the Arkansas Crime Information Center, which is authorized to collect, maintain, and disseminate criminal history information;

(4) "CODIS" means the Federal Bureau of Investigation Laboratory's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal forensic laboratories, state forensic laboratories, and local forensic laboratories;

(5) "Conviction information" means criminal history information disclosing that a person has pleaded guilty or nolo contendere to, or was

found guilty of, a criminal offense in a court of law, together with sentencing information;

(6)(A) "Criminal history information" means a record compiled by a central repository or the Identification Bureau of the Department of Arkansas State Police on an individual consisting of names and identification data, notations of arrests, detentions, indictments, informations, or other formal criminal charges. This record also includes any dispositions of the charges, as well as notations on correctional supervision and release.

(B) "Criminal history information" does not include fingerprint records on individuals not involved in the criminal justice system or driver history records;

(7) "Criminal history information system" means the equipment, procedures, agreements, and organizations thereof, for the compilation, processing, preservation, and dissemination of criminal history information;

(8) "Criminal justice agency" means a government agency or any subunit of a government agency that is authorized by law to perform the administration of criminal justice and that allocates more than one-half (1/2) its annual budget to the administration of criminal justice;

(9) "Criminal justice official" means an employee of a criminal justice agency performing the administration of criminal justice;

(10)(A) "Disposition" means information describing the outcome of any criminal charges, including notations that law enforcement officials have elected not to refer the matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed.

(B) "Disposition" also includes acquittals, dismissals, probations, charges pending due to mental disease or defect, guilty pleas, nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender determinations, first offender programs, pardons, commuted sentences, mistrials in which the defendant is discharged, executive clemencies, paroles, releases from correctional supervision, or deaths;

(11) "Dissemination" means disclosing criminal history information or the absence of criminal history information to any person or organization outside the agency possessing the information;

(12) "DNA" means deoxyribonucleic acid that is located in the cells of an individual, provides an individual's personal genetic blueprint, and encodes genetic information that is the basis of human heredity and forensic identification;

(13)(A) "DNA record" means DNA identification information stored in the State DNA Data Base or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.

(B) The DNA record is the result obtained from the DNA typing tests.

(C) The DNA record is composed of the characteristics of a DNA sample that are of value in establishing the identity of individuals.

(D) The results of all DNA identification tests on an individual's DNA sample also are collectively referred to as the DNA profile of an individual;

(14) "DNA sample" means a blood, saliva, or tissue sample provided by any individual as required by this subchapter or submitted to the State Crime Laboratory for analysis or storage, or both;

(15) "Sealed record" means a record that was sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.;

(16) "Identification Bureau" means the Identification Bureau of the Department of Arkansas State Police, which may maintain fingerprint card files and other identification information on individuals;

(17)(A) "Juvenile aftercare and custody information" means information maintained by the Division of Youth Services of the Department of Human Services regarding the status of a juvenile committed to or otherwise placed in the custody of the division from the date of commitment until the juvenile is released from aftercare or custody, whichever is later.

(B) "Juvenile aftercare and custody information" may include the name, address, and phone number of a contact person or an entity responsible for the juvenile;

(18) "Nonconviction information" means arrest information without disposition if an interval of one (1) year has elapsed from the date of arrest and no active prosecution of the charge is pending, as well as all acquittals and all dismissals; and

(19) "Pending information" means criminal history information in some stage of active prosecution or processing.

History. Acts 1993, No. 1109, § 1; 2001, No. 1048, § 1; 2005, No. 1962, § 40; 2009, No. 974, § 2; 2013, No. 1460, § 3.

Publisher's Notes. For text of section until January 1, 2014, see the bound volume.

Amendments. The 2013 amendment, in (15), substituted "Sealed" for "Expunged" and "sealed under the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401" for "expunged under § 16-90-901."

Effective Dates. Acts 2013, No. 1460, § 17: Jan. 1, 2014. Effective date clause provided: "This act becomes effective on and after January 1, 2014."

12-12-1002. Penalties.

(a) Upon conviction, any criminal justice agency or official subject to fingerprinting or reporting requirements under this subchapter that knowingly fails to comply with such reporting requirements is guilty of a Class B misdemeanor.

(b) A person is guilty of a Class A misdemeanor upon conviction if the person:

(1) Knowingly accesses information or willfully obtains information collected and maintained under this subchapter for a purpose not specified by this subchapter; or

(2) Knowingly releases or discloses information maintained under this subchapter to another person who lacks authority to receive the information.

(c) A person is guilty of a Class D felony upon conviction if the person violates subsection (a) of this section for the purpose of:

(1) Furthering the commission of a misdemeanor offense or felony offense by the person or another person;

(2) Enhancing or assisting a person's position in a legal proceeding in this state or influencing the outcome of a legal proceeding in this state for the benefit of the person or a member of the person's family;

(3) Causing a pecuniary or professional gain for the person or a member of the person's family; or

(4) Political purposes for the person or a member of the person's family.

(d) A person convicted of violating subsection (c) of this section is subject to an additional fine of not more than five hundred thousand dollars ($500,000).

History. Acts 1993, No. 1109, § 15; 2009, No. 974, § 3; 2011, No. 1224, § 2.

A.C.R.C. Notes. Acts 2011, No. 1224, § 3, provided: "The provisions of this act shall not be retroactive."

Amendments. The 2011 amendment rewrote (b)(1); inserted (b)(2) and (c); redesignated former (b)(2) as present (d); and substituted "subsection (c)" for "subdivision (b)(1)" in (d).

12-12-1006. Fingerprinting, DNA sample collection, and photographing.

(a)(1) Immediately following an arrest for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person if the offense is a felony or a Class A misdemeanor.

(2) In addition to the requirements of subdivision (a)(1) of this section, a law enforcement official at the receiving criminal detention facility shall take or cause to be taken a DNA sample of a person arrested for:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Kidnapping, § 5-11-102;

(D) Rape, § 5-14-103;

(E) Sexual assault in the first degree, § 5-14-124; or

(F) Sexual assault in the second degree, § 5-14-125.

(b)(1) When the first appearance of a defendant in court is caused by a citation or summons for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person when the offense is a felony or a Class A misdemeanor.

(2) In addition to the requirements of subdivision (b)(1) of this section, if the first appearance of a defendant in court is caused by a citation or summons for a felony offense enumerated in subdivision (a)(2) of this section, the court immediately shall order and a law

enforcement officer shall take or cause to be taken a DNA sample of the arrested person.

(c)(1) When felony or Class A misdemeanor charges are brought against a person already in the custody of a law enforcement agency or correctional agency and the charges are separate from the charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall again take the fingerprints and photograph of the person in connection with the new charges.

(2) In addition to the requirements of subdivision (c)(1) of this section, when a felony charge enumerated in subdivision (a)(2) of this section is brought against a person already in the custody of a law enforcement agency or a correctional agency and the felony charge is separate from the charge or charges for which the person was previously arrested or confined, the law enforcement agency or the correctional agency shall take or cause to be taken a DNA sample of the person in connection with the new felony charge unless the law enforcement agency or the correctional agency can verify that the person's DNA record is stored in the State DNA Data Base or CODIS.

(d)(1) When a defendant pleads guilty or nolo contendere to or is found guilty of any felony or Class A misdemeanor charge, the court shall order that the defendant be immediately fingerprinted and photographed by the appropriate law enforcement official.

(2) In addition to the requirements of subdivision (d)(1) of this section, if a defendant pleads guilty or nolo contendere to or is found guilty of a felony charge enumerated in subdivision (a)(2) of this section, the court shall order that the defendant provide a DNA sample to the appropriate law enforcement official unless the appropriate law enforcement official can verify that the defendant's DNA record is stored in the State DNA Data Base or CODIS.

(e)(1) Fingerprints or photographs taken after arrest or court appearance under subsections (a) and (b) of this section or taken from persons already in custody under subsection (c) of this section shall be forwarded to the Identification Bureau of the Department of Arkansas State Police within forty-eight (48) hours after the arrest or court appearance.

(2) Fingerprints or photographs taken under subsection (d) of this section shall be forwarded to the Identification Bureau by the fingerprinting official within five (5) working days after the plea or finding of guilt.

(f) Fingerprint cards or fingerprint images may be retained by the Identification Bureau, and criminal history information may be retained by the central repository for any criminal offense.

(g)(1) A DNA sample provided under this section shall be delivered to the State Crime Laboratory by a law enforcement officer at the law enforcement agency that took the sample in accordance with rules promulgated by the State Crime Laboratory.

(2) A DNA sample taken under this section shall be retained in the State DNA Data Bank established under § 12-12-1106.

(h) A DNA sample provided under this section shall be taken in accordance with rules promulgated by the State Crime Laboratory in consultation with the Department of Arkansas State Police and the Department of Health.

(i) Refusal to be fingerprinted or photographed or refusal to provide a DNA sample as required by this subchapter is a Class B misdemeanor.

(j)(1) A person authorized by this section to take a DNA sample is not criminally liable for taking a DNA sample under this subchapter if he or she takes the DNA sample in good faith and uses reasonable force.

(2) A person authorized by this section to take a DNA sample is not civilly liable for taking a DNA sample if the person acted in good faith, in a reasonable manner, using reasonable force, and according to generally accepted medical and other professional practices.

(k)(1) An authorized law enforcement agency or an authorized correctional agency may employ reasonable force if an individual refuses to submit to a taking of a DNA sample authorized under this subchapter.

(2) An employee of an authorized law enforcement agency or an authorized correctional agency is not criminally or civilly liable for the use of reasonable force described in subdivision (k)(1) of this section.

(l) A person less than eighteen (18) years of age is exempt from all provisions of this section regarding the collection of a DNA sample unless that person is charged by the prosecuting attorney as an adult in circuit court or pleads guilty or nolo contendere to or is found guilty of a felony offense in circuit court.

History. Acts 1993, No. 1109, § 5; 1997, No. 826, § 5; 1997, No. 1231, § 1; 2001, No. 177, § 2; 2001, No. 1712, § 2; 2009, No. 974, § 6; 2011, No. 699, § 1.

Amendments. The 2011 amendment inserted (a)(2)(D) and redesignated the remaining subdivisions accordingly.

12-12-1008. Dissemination for criminal justice purposes. [Effective January 1, 2014.]

(a) Pending information, conviction information, and nonconviction information available through the Arkansas Crime Information Center, plus information obtained through the Interstate Identification Index or from another state's record system and juvenile aftercare and custody information, shall be disseminated to criminal justice agencies and officials for the administration of criminal justice.

(b) A criminal justice agency shall query the center to obtain the latest updated information prior to disseminating criminal history information, unless the criminal justice agency knows that the center does not maintain the information or is incapable of responding within the necessary time period.

(c) If a criminal justice agency disseminates criminal history information received from the center to another criminal justice agency, the disseminating criminal justice agency shall maintain for at least one (1) year a dissemination log recording the identity of the record subject, the

agencies or persons to whom the criminal history information was disseminated, and the date it was provided.

(d) A sealed record shall be made available to criminal justice agencies for criminal justice purposes as other laws permit.

(e) A DNA sample or DNA record obtained under this subchapter shall be disseminated only to criminal justice agencies and criminal justice officials for the administration of criminal justice.

History. Acts 1993, No. 1109, § 7; 2001, No. 1048, § 3; 2009, No. 974, § 7; 2013, No. 1460, § 4.

Publisher's Notes. For text of section effective until January 1, 2014, see the bound volume.

Amendments. The 2013 amendment substituted "A sealed record" for "Expunged records" in (d).

Effective Dates. Acts 2013, No. 1460, § 17: Jan. 1, 2014. Effective date clause provided: "This act becomes effective on and after January 1, 2014."

Subchapter 11 — State Convicted Offender DNA Data Base Act

12-12-1105. State DNA Data Base.

History. Acts 1997, No. 737, § 5; 2003, No. 1470, § 3; 2009, No. 974, § 11.

Publisher's Notes. This History is being set out to reflect a correction in the 2009 bound volume.

Subchapter 12 — Victim Notification System

SECTION.
12-12-1202. Information provided.

12-12-1202. Information provided.

(a) A victim notification may be accomplished by means of the computerized victim notification system established under § 12-12-1201 if pursuant to:

(1) Section 12-29-114, pertaining to escape;

(2) Section 16-21-106, pertaining to assistance to victims and witnesses of crimes;

(3) Section 16-93-204, pertaining to executive clemency;

(4) Section 16-93-615, pertaining to transfer hearings;

(5) Section 16-93-702, pertaining to parole; or

(6) Section 16-97-102, pertaining to sentencing.

(b) The computerized victim notification system established under § 12-12-1201 shall also include information about an inmate's custody status in regard to furloughs, work release, and community correction programs.

History. Acts 1997, No. 1250, § 2; 2005, No. 1962, § 44; 2011, No. 570, § 72.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "16-93-615" for "16-93-206" in (a)(4).

Subchapter 14 — Task Force on Racial Profiling

SECTION.

12-12-1401. Definition.

CASE NOTES

Construction.

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs, thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

12-12-1402. Prohibition on racial profiling.

CASE NOTES

Construction.

Police officer engaged in racial profiling prohibited by state statute, the state constitution, the U.S. Constitution, and the city's written policy and the officer also illegally seized one of the plaintiffs, thereby violating U.S. Const., Amend. IV and the state constitution; the police chief, who supervised the officer and ran the police department, was deliberately indifferent to ongoing and systemic racial profiling of which he was aware and municipal liability was imposed on the city as it permitted the officer to establish and to carry out a custom and practice of engaging in racial profiling. The officer's true objective was not to enforce traffic laws prohibiting people from driving with their vision obstructed or other minor infractions; rather, the neutral traffic laws were used as a pretext for harassing Hispanics (whether here legally or illegally), for obtaining money through fines and towing charges for the financially troubled city, and to provide an incentive for Hispanics to move out of the area—clearly illegitimate objectives. Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

12-12-1403. Policies.

CASE NOTES

Cited: Giron v. City of Alexander, 693 F. Supp. 2d 904 (E.D. Ark. 2010).

12-12-1404. Training.

(a) Each law enforcement agency shall provide annual training to all officers that:

(1) Emphasizes the prohibition against racial profiling;

(2) Ensures that operating procedures adequately implement the prohibition against racial profiling and that the law enforcement agency's law enforcement personnel have copies of, understand, and follow the operating procedures; and

(3) Includes foreign language instruction, if possible, to ensure adequate communication with residents of a community.

(b) The course or courses of instruction and the guidelines shall stress understanding and respect for racial, ethnic, national, religious, and cultural differences and development of effective and appropriate methods of carrying out law enforcement duties.

(c)(1) The Arkansas Commission on Law Enforcement Standards and Training shall adopt an initial training module concerning diversity and racial sensitivity for recruits and officers.

(2) The commission shall also adopt a training module for biennial recertification for all recruits and officers who have completed the initial training module.

(d)(1) By January 1, 2006, the commission shall promulgate rules that will set significant standards for all training required in this section.

(2) The commission may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) The commission may review and recommend changes to the racial profiling policy of any law enforcement agency.

(4) Upon request, the racial profiling policy of any law enforcement agency shall be made available to the commission for the purpose described in subdivision (d)(3) of this section.

(5) The commission may establish a toll-free hotline and an email address to receive complaints concerning racial profiling.

History. Acts 2003, No. 1207, § 4; 2005, No. 2136, § 5; 2011, No. 779, § 11.

Amendments. The 2011 amendment deleted former (c)(2) and redesignated the remaining subdivisions accordingly.

Subchapter 16 — Criminal History for Volunteers Act

SECTION.

Effective Dates. Acts 2013, No. 575, § 3: Apr. 2, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas public school students and their parents or guardians should be confident that any person who is allowed to volunteer at a school district or an

education service cooperative does not have a criminal record and is not a potential threat to the safety of children; and that this act is immediately necessary to afford additional protection to school children from all persons in school districts or education service cooperatives who might sexually, physically, or emotionally abuse students entrusted into their care. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-12-1603. Definitions.

As used in this subchapter:

(1) "Children" means individuals under sixteen (16) years of age;

(2) "Conviction" means that an individual has been found guilty of or has pleaded guilty or nolo contendere to any offense by any court in the State of Arkansas or of any similar offense by a court in another state or a federal court regardless of whether the conviction has been sealed or expunged;

(3) "Criminal history information" means a record compiled by the Arkansas Crime Information Center or the Identification Bureau of the Department of Arkansas State Police on an individual;

(4) "Domestic abuse" means the same as defined in § 9-4-102;

(5) "Elderly" means individuals sixty-five (65) years of age or older;

(6) "Employee" means an individual currently in the service of an employer for full-time or part-time compensation and employed by contract or at will, in which the employer has the authority to control the individual in the material details of how work shall be performed and when compensation shall be provided;

(7) "Individuals with disabilities" means mentally ill or developmentally disabled individuals with physical or mental impairments that substantially limit one (1) or more of the major life activities of the individual;

(8) "Volunteer" means an individual who provides services involving contact with children, the elderly, victims of domestic abuse, or individuals with disabilities without an express or implied promise of compensation; and

(9) "Volunteer organization" means an individual, group of individuals, association, partnership, corporation, limited liability company or partnership, business, public school, school district, person or organization designated by a public school or school district to organize volunteers for the public school or school district, or other entity that has volunteers who provide services to children, the elderly, victims of domestic abuse, or individuals with disabilities.

History. Acts 2005, No. 1778, § 1; 2011, No. 779, § 12; 2013, No. 575, § 1.

Amendments. The 2011 amendment inserted "victims of domestic abuse" in (8).

The 2013 amendment rewrote (9).

12-12-1608. Penalty.

The following acts are a Class A misdemeanor:

(1) Knowingly releasing or disclosing criminal history information to any unauthorized volunteer organization or person; or

(2) Obtaining criminal history information for a purpose not authorized by this subchapter.

History. Acts 2005, No. 1778, § 1; 2011, No. 779, § 13.

Amendments. The 2011 amendment substituted "criminal history" for "criminal background" in (1); and inserted "criminal history" in (2).

Subchapter 17 — Adult and Long-Term Care Facility Resident Maltreatment Act

12-12-1703. Definitions.

As used in this subchapter:

(1)(A) "Abuse" means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) "Caregiver" means any of the following that has the responsibility for the protection, care, or custody of an endangered person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court:

(A) A related person or an unrelated person;

(B) An owner, an agent, or a high managerial agent of a public or private organization; or

(C) A public or private organization;

(4) "Department" means the Department of Human Services;

(5) "Endangered person" means:

(A) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A long-term care facility resident or an Arkansas State Hospital resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;

(C) The fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses

the resources of an endangered person, impaired person, or long-term care facility resident for monetary or personal benefit, profit, or gain, or that results in depriving the endangered person, impaired person, or long-term care facility resident of rightful access to or use of benefits, resources, belongings, or assets; or

(D) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

(7)(A) "Fiduciary" means a person or entity with the legal responsibility to:

(i) Make decisions on behalf of and for the benefit of another person; and

(ii) Act in good faith and with fairness.

(B) "Fiduciary" includes without limitation:

(i) A trustee;

(ii) A guardian;

(iii) A conservator;

(iv) An executor;

(v) An agent under financial power of attorney or health care power of attorney; or

(vi) A representative payee;

(8) "Imminent danger to health or safety" means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(9)(A) "Impaired person" means a person eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this subchapter, a long-term care facility resident is presumed to be an impaired person.

(C) For purposes of this subchapter, a person who has a representative payee appointed for the person by the Social Security Administration or another authorized agency is presumed to be an impaired person in relation to adult maltreatment through financial exploitation;

(10) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with intellectual disabilities; or

(F) Any facility that provides long-term medical or personal care;

(11) "Long-term care facility resident" means a person, regardless of age, living in a long-term care facility;

(12) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(13) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(14) "Maltreated person" means a person, regardless of age, who has been abused, exploited, neglected, physically abused, or sexually abused;

(15) "Neglect" means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a treatment plan developed or implemented by the facility; or

(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness;

(16)(A) "Physical injury" means the impairment of a physical condition or the infliction of substantial pain on a person.

(B) If the person is an endangered person or an impaired person, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(17) "Serious bodily harm" means sexual abuse, physical injury, or serious physical injury;

(18) "Serious physical injury" means physical injury to an endangered person or an impaired person that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(19) "Sexual abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(20) "Subject of the report" means:

(A) The endangered person or impaired person;

(B) The adult's legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 7; 2007, No. 497, § 4; 2009, No. 165, §§ 9, 10; 2009, No. 525, § 1; 2011, No. 206, § 7; 2013, No. 584, §§ 1, 2.

Amendments. The 2011 amendment inserted "or an Arkansas State Hospital resident" in (5)(B).

The 2013 amendment added (9)(C); and rewrote (15)(B)(iii) and (15)(B)(iv).

12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.

(a)(1) Whenever any of the following persons has observed or has reasonable cause to suspect that an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment, the person shall immediately report or cause a report to be made in accordance with the provisions of this section:

(A) A physician;

(B) A surgeon;

(C) A coroner;

(D) A dentist;

(E) A dental hygienist;

(F) An osteopath;

(G) A resident intern;

(H) A nurse;

(I) A member of a hospital's personnel who is engaged in the administration, examination, care, or treatment of persons;

(J) A social worker;

(K) A case manager;

(L) A home health worker;

(M) A mental health professional;

(N) A peace officer;

(O) A law enforcement officer;

(P) A facility administrator or owner;

(Q) An employee in a facility;

(R) An employee of the Department of Human Services;

(S) A firefighter;

(T) An emergency medical technician;

(U) An employee of a bank or other financial institution;

(V) An employee of the United States Postal Service;

(W) An employee or a volunteer of a program or an organization funded partially or wholly by the department who enters the home of or has contact with an elderly person;

(X) A person associated with the care and treatment of animals, such as animal control officers and humane society officials;

(Y) An employee who enforces code requirements for a city, township, or municipality; or

(Z) Any clergy member, including without limitation, a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization, or an individual reasonably believed to be a minister, a priest, a rabbi, an accredited

Christian Science practitioner, or any other similar functionary of a religious organization by the person consulting him or her, except to the extent he or she:

(i) Has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(ii) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission.

(2) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff, an employee in or owner of a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made within twenty-four (24) hours or on the next business day, whichever is earlier.

(3) In addition to those persons and officials required to report suspected maltreatment, any other person may make a report if the person has observed an adult or long-term care facility resident being maltreated or has reasonable cause to suspect that an adult or long-term care facility resident has been maltreated.

(b)(1) A report for a long-term care facility resident shall be made:

(A) Immediately to the local law enforcement agency for the jurisdiction in which the long-term care facility is located; and

(B) To the Office of Long-Term Care, under regulations of that office.

(2) A report of a maltreated adult who does not reside in a long-term care facility shall be made to the adult and long-term care facility maltreatment hotline provided in § 12-12-1707.

(c) No privilege or contract shall relieve any person required by this subchapter to make a notification or report from the requirement of making the notification or report.

(d)(1) Upon request the Department of Human Services shall provide a person listed in subdivision (a)(1) of this section with confirmation of receipt of a report of maltreatment.

(2) However, confirmation shall consist only of the acknowledgement of receipt of the report and the date the report was made to the department.

History. Acts 2005, No. 1812, § 1; 2007, No. 497, § 5; 2013, No. 584, § 3.

Amendments. The 2013 amendment added (d).

CASE NOTES

Employment Actions.

Where a nursing home employee was terminated based on reports of improper sexual contact with a male resident, the employee's discrimination claims failed the employee did not show pretext; the employee's libel claims failed because there was no evidence to support the claim that any of the defendants defamed the employee by falsely stating that the employee initiated the sexual contact with the resident. Evance v. Trumann Health Servs., LLC, 719 F.3d 673 (8th Cir. 2013), rehearing denied, — F.3d —, 2013 U.S.

App. LEXIS 15005 (8th Cir. Ark. July 23, 2013).

12-12-1710. Investigation by Department of Human Services.

(a) The Department of Human Services shall have jurisdiction to investigate all cases of suspected maltreatment of an endangered person or an impaired person.

(b)(1) The Adult Protective Services Unit of the Department of Human Services shall investigate:

(A) All cases of suspected adult maltreatment if the act or omission occurs in a place other than a long-term care facility; and

(B) All cases of suspected adult maltreatment of an adult endangered person or an adult impaired person if a family member of the adult endangered person or adult impaired person is named as the suspected offender, regardless of whether or not the adult endangered person or adult impaired person is a long-term care facility resident.

(2) The Office of Long-Term Care shall investigate all cases of suspected maltreatment of a long-term care facility resident.

(3) If requested by the department, a law enforcement agency possessing jurisdiction shall assist in the investigation of any case of suspected adult maltreatment or long-term care facility resident maltreatment, including accompanying the department's investigator if the department has a reasonable belief that the investigator's safety could be compromised.

History. Acts 2005, No. 1812, § 1; 2013, No. 584, § 4.

Amendments. The 2013 amendment rewrote (b)(3).

12-12-1715. Rights of subject of report — Investigative determination of the Department of Human Services — Notice of finding — Appeal.

(a) Upon completion of an investigation, the Department of Human Services shall determine that an allegation of adult maltreatment or long-term care facility maltreatment is either:

(1)(A) Unfounded, a finding that shall be entered if the allegation is not supported by a preponderance of the evidence.

(B) An unfounded hard copy report shall be destroyed one (1) year after the completion of the investigation; or

(2)(A) Founded, a finding that shall be entered if the allegation is supported by a preponderance of the evidence.

(B) A determination of founded but exempt shall be entered on a report if an adult practicing his or her religious beliefs is receiving spiritual treatment under § 5-28-105 or § 12-12-1704.

(b)(1)(A) After making an investigative determination, the department shall notify in writing within ten (10) business days:

(i)*(a)* The person identified as the offender.

(b) However, in cases of unfounded self-neglect, no notice is required;

(ii) Either the:

(a) Person identified as the maltreated person;

(b) Legal guardian of the maltreated person; or

(c) Natural or legal guardian of a long-term care facility resident under eighteen (18) years of age;

(iii) The current administrator of the long-term care facility if the incident occurred in a long-term care facility; and

(iv) If known by the Office of Long-Term Care, the administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred.

(B) If the investigation determines that the report is founded, notification to the offender shall be by process server or by certified mail, restricted delivery.

(2) The notification under subdivision (b)(1) of this section shall include the following:

(A) The investigative determination, exclusive of the source of the notification, including the nature of the allegation and the date and time of occurrence;

(B) A statement that an offender of a founded report has the right to an administrative hearing upon a timely request;

(C) A statement that the request for an administrative hearing shall be made to the department within thirty (30) days of receipt of the notice of determination;

(D) A statement that the administrative hearing will be by telephone hearing unless the offender requests an in-person hearing within thirty (30) days after the date of receipt of notice of the determination;

(E) A statement of intent to report in writing after the offender has had an opportunity for an administrative hearing the founded investigative determination to:

(i) The Adult and Long-term Care Facility Resident Maltreatment Central Registry; and

(ii) Any applicable licensing authority;

(F) A statement that the offender's failure to request an administrative hearing in writing within thirty (30) days from the date of receipt of the notice will result in submission of the investigative report, including the investigative determination, to:

(i) The registry; and

(ii) Any applicable licensing authority;

(G) The consequences of waiving the right to an administrative hearing;

(H) The consequences of a finding by a preponderance of the evidence through the administrative hearing process that the maltreatment occurred;

(I) The fact that the offender has the right to be represented by an attorney at the offender's own expense; and

(J) The name of the person making the notification, his or her occupation, and the location at which he or she can be reached.

(c)(1) The administrative hearing process shall be completed within one hundred twenty (120) days from the date of the receipt of the request for a hearing unless waived by the offender.

(2) The department shall hold the administrative hearing at a reasonable place and time.

(3) For an incident occurring in a long-term care facility, the department may not make a finding that an offender has neglected a long-term care facility resident if the offender demonstrates that the neglect was caused by factors beyond the control of the offender.

(4) A delay in completing the administrative hearing process that is attributable to the offender shall not count against the time limit in subdivision (c)(1) of this section.

(5) Failure to complete the administrative hearing process in a timely fashion shall not prevent the department or a court from:

(A) Reviewing the investigative determination of jurisdiction;

(B) Making a final agency determination; or

(C) Reviewing a final agency determination under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(6) If any party timely requests an in-person administrative hearing, the hearing officer may notify the parties that the hearing will be conducted by video conference.

(d) [Repealed.]

(e) If the department's investigative determination of founded is upheld during the administrative hearing process or if the offender does not timely appeal for or waives the right to an administrative hearing, the department shall report the investigative determination in writing within ten (10) business days to:

(1) The offender;

(2) The current administrator of the long-term care facility if the incident occurred in a long-term care facility;

(3) The administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred;

(4) The appropriate licensing authority;

(5) The registry;

(6) The maltreated person or the legal guardian of the maltreated person; and

(7) If required under § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

History. Acts 2005, No. 1812, § 1; 2009, No. 525, § 3; 2011, No. 1139, § 1; 2013, No. 584, § 5.

Amendments. The 2011 amendment deleted (d).

The 2013 amendment rewrote the section heading and (a)(1)(B).

12-12-1717. Availability of founded reports of adult or long-term care facility resident maltreatment.

(a) A report made under this subchapter that is determined to be founded, as well as any other information obtained, including protected health information, and a report written or photograph taken concerning a founded report in the possession of the Department of Human Services shall be confidential and shall be made available only to:

(1) A physician who has before him or her an endangered person or an impaired person the physician reasonably believes may have been maltreated;

(2) A person authorized to place the adult in protective custody if the person:

(A) Has before him or her an adult the person reasonably believes may have been maltreated; and

(B) Requires the information to determine whether to place the adult in protective custody;

(3) An authorized agency having responsibility for the care or supervision of an endangered person or an impaired person;

(4) Any person who is the subject of a report or that person's legal guardian;

(5) A grand jury or court, if the grand jury or court determines that the information is necessary for the determination of an issue before the grand jury or court;

(6) A prosecuting attorney, law enforcement official, coroner, or the Attorney General or his or her designated investigator;

(7) [Repealed.];

(8)(A) An employer or volunteer agency for the purpose of screening an employee, applicant, or volunteer upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The only information released to the employer or volunteer agency shall be whether or not the Adult and Long-term Care Facility Resident Maltreatment Central Registry contains any founded reports naming the employee, applicant, or volunteer as an offender;

(9) The department, including the Death Review Committee of the Department of Human Services;

(10) The current administrator of the long-term care facility, if the incident occurred in a long-term care facility;

(11) The administrator of the long-term care facility that currently employs the offender, if different from the long-term care facility in which the incident occurred;

(12) A person or provider identified by the department as having services needed by the maltreated person;

(13) Any applicable licensing or registering authority;

(14) Any employer, legal entity, or board responsible for the person named as the offender;

(15) Any legal entity or board responsible for the maltreated person;

(16) [Repealed.]; and

(17) A state or federal agency pursuing an official criminal records check.

(b)(1) Under no circumstances may the information contained in the registry be released to a person unless the person's capacity is confirmed by the department.

(2) Except for the subject of the report, no person or agency to whom disclosure is made may disclose to any other person or agency a report or other information obtained under this section.

(c)(1) The department may not release data that would identify the person who made a report except to law enforcement, a prosecuting attorney, or the office of the Attorney General.

(2) A court of competent jurisdiction may order release of data that would identify the person who made a report after the court has reviewed in camera the record related to the report and has found that disclosure is needed:

(A) To prevent execution of a crime; or

(B) For prosecution of a crime.

(d) However, information contained in the registry may be made available to bona fide and approved research groups solely for the purpose of scientific research, but in no event shall the name of a person be released, nor shall specific circumstances or facts related to a specific person be used in any research report that might be identifiable with the person.

(e) A person who knowingly permits or encourages the release of data or information contained in the registry to a person not permitted by this subchapter to receive the data or information upon conviction is guilty of a Class A misdemeanor.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 9; 2009, No. 165, § 11; 2011, No. 206, § 8; 2013, No. 584, §§ 6 — 9.

Amendments. The 2011 amendment added (a)(17).

The 2013 amendment repealed (a)(7) and (a)(16); inserted "department, including the" in (a)(9); and inserted "or agency" preceding "a report" in (b)(2).

12-12-1718. Availability of screened out, pending, and unfounded reports.

(a) A record of a screened-out report of adult maltreatment or long-term care facility resident maltreatment shall not be disclosed except to the office of the Attorney General, the prosecuting attorney, and an appropriate law enforcement agency and may be used only within the Department of Human Services for purposes of administration of the program.

(b)(1) A pending report, including protected health information, is confidential and shall be made available only to:

(A) The department, including the Death Review Committee of the Department of Human Services;

(B) A law enforcement agency;

(C) A prosecuting attorney;

(D) The office of the Attorney General;

(E) A circuit court having jurisdiction pursuant to a petition for emergency, temporary, long-term protective custody, or protective services;

(F) A grand jury or court, upon a finding that the information in the report is necessary for the determination of an issue before the grand jury or court;

(G) A person or provider identified by the department as having services needed by the maltreated person;

(H) Any applicable licensing or registering authority;

(I) Any employer, legal entity, or board responsible for the person named as the offender;

(J) Any legal entity or board responsible for the maltreated person; and

(K) [Repealed.]

(2) The subject of the report may only be advised that a report is pending.

(c) Upon satisfaction of due process and if an allegation was determined to be unfounded, the investigative report, including protected health information, is confidential and shall be made available only to:

(1) The department, including the committee;

(2) A law enforcement agency;

(3) A prosecuting attorney;

(4) The office of the Attorney General;

(5) Any applicable licensing or registering authority;

(6) Any person named as a subject of the report or that person's legal guardian;

(7) A circuit court having jurisdiction pursuant to a petition for emergency, temporary, long-term protective custody, or protective services;

(8) A grand jury or court, upon a finding that the information in the record is necessary for the determination of an issue before the grand jury or court;

(9) A person or provider identified by the department as having services needed by the person;

(10) Any employer, legal entity, or board responsible for the person named as the offender;

(11) Any legal entity or board responsible for the maltreated person; and

(12) [Repealed.]

(d) The department may retain automated information on unfounded reports for statistical purposes, to assess future risk, and to identify false reporting.

(e)(1) Except for the subject of the report, no person or agency to which disclosure is made may disclose to any other person or agency a report or other information obtained under this section.

(2) Upon conviction, any person disclosing information in violation of this subsection is guilty of a Class C misdemeanor.

(f)(1) The department may not release data that would identify the person who made a report except to law enforcement, a prosecuting attorney, or the office of the Attorney General.

(2) A court of competent jurisdiction may order release of data that would identify the person who made a report after the court has reviewed in camera the record related to the report and has found that disclosure is needed:

(A) To prevent commission of a crime; or

(B) For prosecution of a crime.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 10; 2009, No. 525, § 5; 2013, No. 584, §§ 10 — 12.

Amendments. The 2013 amendment deleted (b)(1)(K) and (c)(12); rewrote (d); and inserted "or agency" preceding "a report" in (e)(2).

12-12-1722. Services available on investigative finding of founded or unfounded.

(a) If an investigation under this subchapter is determined to be founded, the Department of Human Services may open a protective services case.

(b)(1) If the department opens a protective services case under this section, the department shall provide services to the endangered person or impaired person in an effort to prevent:

(A) Additional maltreatment to the endangered person or impaired person; or

(B) Removal of the endangered person or impaired person from the home.

(2) Services provided by the department shall be relevant to the needs of the endangered person or impaired person.

(c) If at any time during the protective services case the department determines that the endangered person or impaired person cannot safely remain at home, the department shall take steps to remove the endangered person or impaired person under custody under the Arkansas Adult Maltreatment Custody Act, § 9-20-101 et seq.

(d) Upon request, the department shall be provided a copy of the results of radiology procedures, videotapes, photographs, medical records, or financial records on an endangered person or impaired person if the department has an open protective services case.

(e) If the report of adult maltreatment is deemed unfounded, the department may offer supportive services to the alleged endangered person or impaired person.

(f) An alleged endangered person or impaired person may accept or reject supportive services at any time.

History. Acts 2011, No. 206, § 9; 2013, No. 584, §§ 13, 14.

Amendments. The 2013 amendment substituted "founded or unfounded" for "true or unsubstantiated" in the section heading; substituted "to be founded" for "to be true" in (a); and substituted "unfounded" for "unsubstantiated" in (e).

12-12-1723. Rules.

The Director of the Department of Human Services may adopt rules to implement this subchapter.

History. Acts 2013, No. 584, § 15.

Subchapter 18 — Use of Automatic License Plate Reader Systems

12-12-1801. Title.

This subchapter is known and may be cited as the "Automatic License Plate Reader System Act".

History. Acts 2013, No. 1491, § 1.

12-12-1802. Definitions.

As used in this subchapter:

(1) "Alert" means data held by the Office of Motor Vehicle, the Arkansas Crime Information Center including without limitation the Arkansas Crime Information Center's Missing Persons database, the National Crime Information Center, and the Federal Bureau of Investigation Kidnappings and Missing Persons database;

(2) "Automatic license plate reader system" means a system of one (1) or more mobile or fixed automated high-speed cameras used in combination with computer algorithms to convert images of license plates into computer-readable data;

(3)(A) "Captured plate data" means the global positioning device coordinates, date and time, photograph, license plate number, and any other data captured by or derived from any automatic license plate reader system.

(B) Captured plate data shall not include any personal data;

(4) "Governmental entity" means a lawfully created branch, department, or agency of the federal, state, or local government; and

(5) "Secured area" means an area, enclosed by clear boundaries, to which access is limited and not open to the public, and entry is obtainable only through specific access-control points.

History. Acts 2013, No. 1491, § 1.

12-12-1803. Restrictions on use.

(a) Except as provided in subsection (b) of this section, it is unlawful for an individual, partnership, corporation, association, or the State of Arkansas, its agencies, and political subdivisions to use an automatic license plate reader system.

(b) An automatic license plate reader system may be used:

(1) By a state, county, or municipal law enforcement agency for the comparison of captured plate data with data held by the Office of Motor Vehicle, the Arkansas Crime Information Center, the National Crime Information Center, a database created by law enforcement for the purposes of an ongoing investigation, and the Federal Bureau of Investigation for any lawful purpose;

(2) By parking enforcement entities for regulating the use of parking facilities; or

(3) For the purpose of controlling access to secured areas.

History. Acts 2013, No. 1491, § 1.

12-12-1804. Protections.

(a) Captured plate data obtained for the purposes described under § 12-12-1803(b) shall not be used or shared for any other purpose and shall not be preserved for more than one hundred fifty (150) days.

(b) Captured plate data obtained by an entity under § 12-12-1803(b)(1) may be retained as part of an ongoing investigation and shall be destroyed at the conclusion of either:

(1) An investigation that does not result in any criminal charges being filed; or

(2) Any criminal action undertaken in the matter involving the captured plate data.

(c) A governmental entity that uses an automatic license plate reader system under § 12-12-1803(b)(1) shall update the captured plate data collected under this subchapter every twenty-four (24) hours if updates are available.

(d)(1) Except as provided under subdivision (d)(2) of this section, a governmental entity authorized to use an automatic license plate reader system under § 12-12-1803(b) shall not sell, trade, or exchange captured plate data for any purpose.

(2) Captured plate data obtained by a law enforcement agency under § 12-12-1803(b)(1) that indicates evidence of an offense may be shared with other law enforcement agencies.

History. Acts 2013, No. 1491, § 1.

12-12-1805. Practice and usage data preservation.

(a) An entity that uses an automatic license plate reader system under § 12-12-1803(b) shall:

(1) Compile statistical data identified in subsection (b) of this section every six (6) months into a format sufficient to allow the general public to review the compiled data; and

(2) Preserve the compiled data for eighteen (18) months.

(b) The preserved data shall include:

(1) The number of license plates scanned;

(2) The names of the lists against which captured plate data were checked;

(3) For each check of captured plate data against a list:

(A) The number of confirmed matches;

(B) The number of matches that upon further investigation did not correlate to an alert; and

(C) The number of matches that resulted in arrest and prosecution; and

(4)(A) Promulgate rules and policies concerning the manner and method of obtaining, retaining, and destroying captured plate data, including without limitation specific rules and policies concerning retention of material in excess of one hundred fifty (150) days under § 12-12-1804(b) and make those rules and policies available for public inspection.

(B) Failure to comply with subdivision (b)(4)(A) of this section shall be grounds for a court of competent jurisdiction to exclude any evidence obtained under this subchapter.

History. Acts 2013, No. 1491, § 1.

12-12-1806. Use of data and data-derived evidence.

Captured plate data and evidence derived from it shall not be received in evidence in any trial, hearing, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or a political subdivision of the state if the disclosure of that information would be in violation of this subchapter.

History. Acts 2013, No. 1491, § 1.

12-12-1807. Penalties.

(a) A person who violates this subchapter shall be subject to legal action for damages to be brought by any other person claiming that a violation of this subchapter has injured his or her business, person, or reputation.

(b) A person so injured shall be entitled to actual damages or liquidated damages of one thousand dollars ($1,000), whichever is greater, and other costs of litigation.

History. Acts 2013, No. 1491, § 1.

12-12-1808. Privacy.

(a)(1) Captured plate data or data obtained from the Office of Motor Vehicle may be disclosed only:

(A) To the person to whom the vehicle is registered;

(B) After the written consent of the person to whom the vehicle is registered; or

(C) If the disclosure of the data is permitted by the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq., as it existed on January 1, 2013.

(2) Practice and usage data compiled and preserved under § 12-12-1806 are a public record for purposes of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Upon the presentation to an appropriate governmental entity of a valid, outstanding protection order protecting the driver of a vehicle jointly registered with or registered solely in the name of the individual against whom the order was issued, captured plate data shall not be disclosed except as the result of a match under § 12-12-1803(b).

History. Acts 2013, No. 1491, § 1.

CHAPTER 14

STATE CAPITOL POLICE

12-14-106. Additional salary payments.

A.C.R.C. Notes. Acts 2013, No. 1376, § 14, provided: "STATE CAPITOL POLICE. In the event that sufficient revenues, in the judgment of the Secretary of State exist, the Secretary is hereby authorized to make additional salary payments from such funds to those employees who have attained law enforcement certification above the basic certificate level, as defined by the Arkansas Commission on Law Enforcement Standards. It is the intent of this Section that such payment shall be optional, at the discretion of the Secretary, dependent on sufficient revenues and shall not be implemented using funds specifically set aside for other programs within the Department.

"Employees shall be eligible for all or a portion of additional salary payments scheduled as follows:

"I. General Certificate — $ 300 annually

"II. Intermediate Certificate — $ 600 annually

"III. Advanced Certificate — $ 900 annually

"IV. Senior Certificate — $1,200 annually

"Payment of such funds may be made monthly, quarterly, semiannually or annually depending upon the availability of revenues and shall be restricted to the following classifications:

"1. Sec. of State Capitol Police Chief

"2. Sec. of State Police Sergeant

"3. Sec. of State Corporal

"4. Sec. of State Assistant Chief Capitol Police Captain

"Payments made under this Section which are awarded as partial or lump sum payments shall not be considered as salary for purposes of retirement benefits but shall be subject to withholding of all applicable federal and state taxes. Payments made under this Section shall not be construed as exceeding the maximum annual salary of the employee.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

CHAPTER 15
WEAPONS

SUBCHAPTER.
2. Concealed Handgun Permits.

Subchapter 2 — Concealed Handgun Permits

SECTION.

Effective Dates. Acts 2013, No. 539, § 5: Mar. 28, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a prosecuting attorney and his or her deputy prosecuting attorneys perform a vital public function and often are in dangerous situations due to the nature of the crimes they prosecute; and that this act is immediately necessary because allowing a prosecuting attorney and his or her deputy prosecuting attorneys to carry a firearm or concealed handgun is essential to the safe operation of criminal justice in this state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-15-201. Definitions.

As used in this subchapter:

(1) "Auxiliary law enforcement officer" means a person certified by the Arkansas Commission on Law Enforcement Standards and Training and approved by the county sheriff or chief of police of a municipality where he or she is acting as an auxiliary law enforcement officer if:

(A) The auxiliary law enforcement officer has completed the minimum training requirements and is certified as an auxiliary law enforcement officer in accordance with the commission; and

(B) The chief of police of the law enforcement agency or county sheriff authorizes the status of the auxiliary law enforcement officer and the authorization is:

(i) In writing;

(ii) In the possession of the auxiliary law enforcement officer; and

(iii) Produced upon demand at the request of any law enforcement officer or owner or operator of any of the prohibited places under § 5-73-306;

(2) "Certified law enforcement officer" means any appointed or elected law enforcement officer or county sheriff employed by a public law enforcement department, office, or agency who:

(A) Is responsible for the prevention and detection of crime and the enforcement of the criminal, traffic, or highway laws of this state; and

(B) Has met the selection and training requirements for certification set by the Arkansas Commission on Law Enforcement Standards and Training; and

(3) "Employee of a local detention facility" means a person who:

(A) Is employed by a county sheriff or municipality that operates a local detention facility and whose job duties include:

(i) Securing a local detention facility;

(ii) Monitoring inmates in a local detention facility; or

(iii) Administering the daily operation of the local detention facility;

(B) Has completed the minimum training requirements; and

(C) Has obtained authorization from the chief of police of the law enforcement agency or county sheriff and the authorization is:

(i) In writing;

(ii) In the possession of the employee of a local detention facility; and

(iii) Produced upon demand at the request of any law enforcement officer or owner or operator of any of the prohibited places under § 5-73-306;

(4) "In good standing" means that the person:

(A) Was not terminated;

(B) Did not resign in lieu of termination; or

(C) Was not subject to a pending disciplinary action or criminal investigation at the time of his or her retirement or resignation from the public law enforcement department, office, or agency;

(5) "Local detention facility" means a jail or other facility that is operated by a municipal police force or a county sheriff for the purpose of housing persons charged with or convicted of a criminal offense; and

(6) "Public law enforcement department, office, or agency" means any public police department, county sheriff's office, or other public agency, force, or organization whose primary responsibility as established by law, statute, or ordinance is the enforcement of the criminal, traffic, or highway laws of this state.

History. Acts 1995, No. 1332, § 2; 2007, No. 675, § 1; 2013, No. 415, § 2; 2013, No. 1220, § 2.

Amendments. The 2013 amendment by No. 415 added definitions for "Auxiliary law enforcement officer" and "In good standing."

The 2013 amendment by No. 1220 inserted present (3) and (5).

12-15-202. Eligibility to carry concealed handgun.

(a) Any certified law enforcement officer, auxiliary law enforcement officer acting as an auxiliary law enforcement officer, employee of a local detention facility, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney may carry a concealed handgun if that certified law enforcement officer, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney:

(1) Is presently in the employ of a public law enforcement department, office, or agency;

(2) Is authorized by the public law enforcement department, office, or agency to carry a firearm in the course and scope of his or her duties;

(3) Is not subject to any disciplinary action that suspends his or her authority as a law enforcement officer or employee of a local detention facility by the public law enforcement department, office, or agency;

(4) Is carrying a badge and appropriate written photographic identification issued by the public law enforcement department, office, or agency identifying him or her as a certified law enforcement officer, employee of a local detention facility, prosecuting attorney, or deputy prosecuting attorney designated by the prosecuting attorney;

(5) Is not otherwise prohibited under federal law;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Has fingerprint impressions on file with the Department of Arkansas State Police Automated Fingerprint Identification System.

(b)(1) A concealed handgun may be carried by any retired law enforcement officer or retired auxiliary law enforcement officer acting as a retired auxiliary law enforcement officer who:

(A) Retired in good standing from service with a public law enforcement department, office, or agency for reasons other than mental disability;

(B) Immediately before retirement was a certified law enforcement officer authorized by a public law enforcement department, office, or agency to carry a firearm in the course and scope of his or her duties;

(C) Is carrying appropriate written photographic identification issued by a public law enforcement department, office, or agency identifying him or her as a retired and former certified law enforcement officer;

(D) Is not otherwise prohibited under federal law from receiving or possessing a firearm;

(E) Has fingerprint impressions on file with the Department of Arkansas State Police Automated Fingerprint Identification System together with written authorization for state and national level criminal history record screening;

(F) During the most recent twelve-month period has met, at the expense of the retired law enforcement officer, the standards of this state for training and qualification for active law enforcement officers to carry firearms;

(G) Before his or her retirement, worked or was employed as a law enforcement officer or acted as an auxiliary law enforcement officer for an aggregate of ten (10) years or more; and

(H) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

(2)(A) The chief law enforcement officer of the city or county shall keep a record of all retired law enforcement officers authorized to carry a concealed handgun in his or her jurisdiction and shall revoke any authorization for good cause shown.

(B) The Director of the Department of Arkansas State Police shall keep a record of all retired department officers authorized to carry a concealed handgun in the state and shall revoke any authorization for good cause shown.

(c)(1)(A) A firearms instructor certified by the Arkansas Commission on Law Enforcement Standards and Training who is employed by any law enforcement agency in this state may certify or recertify that a retired law enforcement officer has met the training and qualification requirements for certification set by the commission for active law enforcement officers to carry firearms.

(B) A retired law enforcement officer shall pay the expenses for meeting the training and qualification requirements described in subdivision (c)(1)(A) of this section.

(2) A firearms instructor who certifies or recertifies that a retired law enforcement officer has met the training and qualification requirements for certification set by the commission for active law enforcement officers to carry firearms under subdivision (c)(1)(A) of this section shall complete and submit any required paperwork to the commission.

(d) Any certified law enforcement officer or retired law enforcement officer carrying a concealed handgun under this section is not subject to the prohibitions and limitations of § 5-73-306.

(e)(1) Any presently employed certified law enforcement officer authorized by another state to carry a concealed handgun shall be entitled to the same privilege while in this state, but subject to the same restrictions of this section, provided that the state which has authorized the officer to carry a concealed handgun extends the same privilege to presently employed Arkansas-certified law enforcement officers.

(2) The director shall make a determination as to which states extend the privilege to carry a concealed handgun to presently employed Arkansas-certified law enforcement officers and shall then determine which states' officers' authority to carry concealed handguns will be recognized in Arkansas.

History. Acts 1995, No. 1332, § 1; 1997, No. 92, § 1; 1997, No. 302, § 1; 2001, No. 251, § 1; 2001, No. 585, § 1; 2003, No. 348, § 1; 2007, No. 134, § 1; 2007, No. 675, § 2; 2013, No. 415, § 3; 2013, No. 539, § 3; 2013, No. 1220, § 3.

Amendments. The 2013 amendment by No. 415 rewrote (a) and (b).

The 2013 amendment by No. 539 rewrote the introductory language of (a) and (a)(4).

The 2013 amendment by No. 1220 inserted "employee of a local detention ... by the prosecuting attorney" before "may carry" in (a) and (a)(4); substituted "handgun if that officer" for "handgun if that certified law enforcement officer ... by the prosecuting attorney" in (a); and inserted "or employee of a local detention facility" following enforcement officer" in (a)(3).

CHAPTER 17

STATE DRUG CRIME ENFORCEMENT AND PROSECUTION GRANT FUND

SECTION.
12-17-106. Drug crime special assessment.

12-17-106. Drug crime special assessment.

(a) There is hereby established a drug crime special assessment to be levied by the district courts or circuit courts of this state in the sum of one hundred twenty-five dollars ($125) against any person who is convicted of or enters a plea of guilty or nolo contendere to any felony or misdemeanor offense the court determines to be a drug crime.

(b) The drug crime special assessment shall be collected by the entity or office designated to collect fines and costs within the jurisdiction.

(c)(1) All drug crime special assessments collected shall be remitted by the county official, city official, agency, or department designated in § 16-13-709 as primarily responsible for the collection of fines assessed in the circuit courts, district courts, or city courts on or before the fifteenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration, for deposit into the State Drug Crime Enforcement and Prosecution Grant Fund, as established by § 12-17-102.

(2) A form provided by the section identifying the amount of the drug crime special assessments shall be transmitted with the collected drug crime special assessments.

History. Acts 2007, No. 1086, § 1; 2009, No. 165, § 13; 2011, No. 779, § 14.

Amendments. The 2011 amendment inserted "drug crime" twice in (c)(2).

CHAPTER 18

CHILD MALTREATMENT ACT

SUBCHAPTER.
1. General Provisions.
2. Offenses and Penalties.
3. Child Abuse Hotline.
4. Reporting Suspected Child Maltreatment.
5. Notice Procedures After a Report of Suspected Child Maltreatment Has Been Made.
6. Investigative Proceedings.
7. Investigative Findings.
8. Administrative Hearings.
9. Child Maltreatment Central Registry.
10. Protective Custody.
11. Public Disclosure of Information on Fatalities and Near Fatalities.
12. Training Regarding Sexually Exploited Children.

Subchapter 1 — General Provisions

12-18-102. Purpose.

The purpose of this chapter is to:

(1) Provide a system for the reporting of known or suspected child maltreatment;

(2) Ensure the immediate screening, safety assessment, and prompt investigation of reports of known or suspected child maltreatment;

(3) Ensure that immediate steps are taken to:

(A) Protect a maltreated child and any other child under the same care who may also be in danger of maltreatment; and

(B) Place a child whose health or physical well-being is in immediate danger in a safe environment;

(4) Provide immunity from criminal prosecution for an individual making a good faith report of suspected child maltreatment;

(5) Preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians;

(6) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, prosecution, and treatment of child maltreatment; and

(7) Stabilize the home environment if a child's health and safety are not at risk.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 1.

Amendments. The 2011 amendment substituted "whose health or physical well-being is in immediate danger" for "who is in immediate danger of severe maltreatment" in (3)(B).

12-18-103. Definitions.

As used in this chapter:

(1)(A) "Abandonment" means:

(i) The failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause; or

(ii) An articulated intent to forego parental responsibility.

(B) "Abandonment" does not include acts or omissions of a parent toward a married minor;

(2)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a

woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) "Abortion" does not mean the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy if done with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the child's parent, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

(i) Extreme or repeated cruelty to a child;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face or head; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Pinching, biting, or striking a child in the genital area;

(e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) A narcotic; or

(4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;

(h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or

(i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel.

(B)(i) The list in subdivision (2)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) "Abuse" does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.

(ii) "Abuse" does not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:

(a) The person exercising the restraint is:

(1) An employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.; and

(2) Acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policy and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger or hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;

(f) The restraint is for a reasonable period of time; and

(g) The restraint is in conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Caretaker" means a parent, guardian, custodian, foster parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor;

(5)(A) "Central intake", otherwise referred to as the "Child Abuse Hotline", means a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this chapter.

(B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(6) "Child" or "juvenile" means an individual who is from birth to eighteen (18) years of age;

(7) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(8) "Department" means the Department of Human Services;

(9) "Deviate sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;

(10)(A)(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.

(ii) If the act was committed against the will of the child, then forcible compulsion has been used.

(B) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion;

(11) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(12) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(13) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

(14)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:

(i) Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;

(ii) Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;

(v) Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;

(vii) Failure to appropriately supervise the child that results in the child's being left alone:

(a) At an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm; or

(b) In inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;

(viii) Failure to appropriately supervise the child that results in the child being placed in:

(a) Inappropriate circumstances creating a dangerous situation; or

(b) A situation that puts the child at risk of harm; or

(ix) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled or as a result of an act or omission by the child's parent or guardian, the child is habitually and without justification absent from school.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the

pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) As used in this subdivision (14)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(*a*) of this section.

(iv) A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(*b*) of this section;

(15) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the child;

(16) "Pornography" means:

(A) Pictures, movies, or videos that lack serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(17) "Reproductive healthcare facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services;

(18) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(19) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions that may or do result in death, abuse involving the use of a deadly weapon as defined by § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(20) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live sexual activity;

(B) By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(C) By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing the listening to a phone sex line; or

(vi) An act of voyeurism; or

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(21)(A)(i) "Sexual contact" means any act of sexual gratification involving:

(a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;

(b) The encouraging of a child to touch the offender in a sexual manner; or

(c) The offender requesting to touch a child in a sexual manner.

(ii) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.

(B) "Sexual contact" does not include normal affectionate hugging;

(22) "Sexual exploitation" means:

(A) Allowing, permitting, or encouraging participation or depiction of the child in:

(i) Prostitution;

(ii) Obscene photography; or

(iii) Obscene filming; or

(B) Obscenely depicting, obscenely posing, or obscenely posturing a child for any use or purpose;

(23) "Significant other" means a person:

(A) With whom the parent shares a household; or

(B) Who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;

(24) "Subject of the report" means:

(A) The offender;

(B) The custodial and noncustodial parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and

(C) The child who is the subject of suspected maltreatment;

(25) "Underaged juvenile offender" means any child younger than fourteen (14) years of age for whom a report of sexual abuse has been determined to be true for sexual abuse to another child; and

(26) "Voyeurism" means looking, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude.

History. Acts 2009, No. 749, § 1; 2011, No. 779, §§ 15–17; 2011, No. 1143, §§ 2–5; 2013, No. 725, §§ 2–4; 2013, No. 1006, §§ 1–6.

A.C.R.C. Notes. Acts 2013, No. 725, § 1, provided: "Findings and purposes.

"(a) The General Assembly finds that:

"(1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults;

"(2) The Child Maltreatment Act, § 12-18-101 et seq., requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children;

"(3) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting;

"(4) The societal costs of these crimes are also significant and affect the entire populace;

"(5) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers Arkansas's interest in protecting children from sexual crimes and provides the state with the tools necessary for successful investigations and prosecutions;

"(6) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and no one has the right to knowingly or willfully impede or circumvent this right;

"(7)(A) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement.

"(B) These activities of individuals other than a parent or guardian include transporting children across state lines to avoid Arkansas's parental involvement requirements for abortion; and

"(8) Such actions violate both the sanctity of the familial relationship and Arkansas's parental involvement law concerning abortion.

"(b) The General Assembly's purposes in enacting the Child Maltreatment Act are to further the important and compelling state interests of:

"(1) Protecting children from sexually predatory adults;

"(2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;

"(3)(A) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion.

"(B) Mandatory reporters must simply report allegations, suspicions, and pertinent facts.

"(C) Trained law enforcement or social services personnel are responsible for any investigation and for the ultimate disposition of the allegation or case;

"(4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;

"(5) Reducing the societal and economic burden on the populace that results from sexual crimes against children;

"(6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and

"(7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights."

Amendments. The 2011 amendment by No. 779 substituted "or the failure of a parent to support" for "and support" in (1)(A)(i); rewrote (19)(B); and added "or" at the end of (20)(A)(ii).

The 2011 amendment by No. 1143 inserted (2)(C)(ii)(*a*)(*2*); substituted "thirteen (13) years of age" for "ten (10) years of age" in (3), the introductory language of (18)(A) and (18)(E), and (22); substituted "fifteen (15) years of age" for "sixteen (16) years of age" in the introductory language of (18)(B); inserted present (18)(B)(iii) and (18)(C) and redesignated the remaining subdivisions accordingly; and substituted "offender" for "aggressor" in (22).

The 2013 amendment by No. 725 added present (2) and (17); and substituted "fourteen (14)" for "thirteen (13)" in present (20)(E).

The 2013 amendment by No. 1006 added "a significant other of the child's parent" in (2)(A); substituted "fourteen (14) years of age" for "thirteen (13) years of age" in (3); deleted "and education required by law, excluding the failure to follow an individualized educational program" in present (14)(A)(ii); deleted "inappropriate circumstances" from present (14)(A)(vii)(*a*); added the present (14)(A)(vii)(*a*) designation; and added present (14)(A)(vii)(*b*), present (14)(A)(viii), and present (14)(A)(ix); substituted "fourteen (14) years of age" for "thirteen (13) years of age" in present (20)(A) and (20)(E); added the definition for "Significant other" and substituted "fourteen (14) years of age" for "thirteen (13) years of age" in present (25).

CASE NOTES

Analysis

Application
Neglect.

Application

Child's testimony, by itself, that her stepmother picked her up by her neck, making it difficult to breathe, described treatment that fit within the definition of abuse under subdivision (2)(A)(vii)(*c*) of this section and was sufficient to support the Arkansas Department of Human Services' finding of maltreatment. Duke v. Selig, 2009 Ark. App. 843, — S.W.3d — (2009).

Neglect.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

12-18-104. Confidentiality.

(a) Any data, records, reports, or documents that are created, collected, or compiled by or on behalf of the Department of Human Services, the Department of Arkansas State Police, or other entity authorized under this chapter to perform investigations or provide services to children, individuals, or families shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) Any data, records, reports, or documents released under this chapter to law enforcement, a prosecuting attorney, or a court by the Department of Human Services are confidential and shall be sealed and not re-disclosed without a protective order to ensure the items of evidence for which there is a reasonable expectation of privacy are not distributed to a person or institution without a legitimate interest in the evidence, provided that nothing in this chapter is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or the law.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 7.

Amendments. The 2013 amendment added (b).

12-18-108. Maintenance of forensic samples from abortions performed on a child.

(a)(1) A physician who performs an abortion on a child who is less than fourteen (14) years of age at the time of the abortion shall preserve under this subchapter fetal tissue extracted during the abortion in accordance with rules adopted by the office of the State Crime Laboratory.

(2) Before submitting the tissue under subdivision (a)(1) of this section, the physician shall redact protected health information as required under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) The physician or the reporting medical facility shall contact the law enforcement agency in the jurisdiction where the child resides.

(b) The State Crime Laboratory shall adopt rules prescribing:

(1) The amount and type of fetal tissue to be preserved under this section;

(2) Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination;

(3) Procedures for documenting the chain of custody of the tissue for use as evidence;

(4) Procedures for proper disposal of fetal tissue preserved under this section;

(5) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this section which shall include the name and address of the physician submitting the fetal tissue and the name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed; and

(6) Procedures for communication with law enforcement agencies regarding evidence and information obtained under this section.

(c) Failure of a physician to comply with this section or any rule adopted under this section shall constitute unprofessional conduct under the Arkansas Medical Practices Act, § 17-95-201 et seq.

History. Acts 2013, No. 725, § 5.

A.C.R.C. Notes. Acts 2013, No. 725, § 1, provided: "Findings and purposes.

"(a) The General Assembly finds that:

"(1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults;

"(2) The Child Maltreatment Act, § 12-18-101 et seq., requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children;

"(3) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting;

"(4) The societal costs of these crimes are also significant and affect the entire populace;

"(5) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers Arkansas's interest in protecting children from sexual crimes and provides the state with the tools necessary for successful investigations and prosecutions;

"(6) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and no one has the right to knowingly or willfully impede or circumvent this right;

"(7)(A) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement.

"(B) These activities of individuals other than a parent or guardian include transporting children across state lines to avoid Arkansas's parental involvement requirements for abortion; and

"(8) Such actions violate both the sanctity of the familial relationship and Arkansas's parental involvement law concerning abortion.

"(b) The General Assembly's purposes in enacting the Child Maltreatment Act are to further the important and compelling state interests of:

"(1) Protecting children from sexually predatory adults;

"(2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;

"(3)(A) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion.

"(B) Mandatory reporters must simply report allegations, suspicions, and pertinent facts.

"(C) Trained law enforcement or social services personnel are responsible for any investigation and for the ultimate disposition of the allegation or case;

"(4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;

"(5) Reducing the societal and economic burden on the populace that results from sexual crimes against children;

"(6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and

"(7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights."

Subchapter 2 — Offenses and Penalties

SECTION.

12-18-204. Unlawful restriction of child abuse reporting.

(a)(1) An employer or supervisor of an employee identified as a mandated reporter commits the offense of unlawful restriction of child abuse reporting if he or she:

(A) Prohibits a mandated reporter under this chapter from making a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline;

(B) Requires that a mandated reporter under this chapter receive permission or notify a person before the mandated reporter makes a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline; or

(C) Knowingly retaliates against a mandated reporter under this chapter for reporting child maltreatment or suspected child maltreatment to the Child Abuse Hotline.

(2)(A) Nothing in this section shall prohibit any person or institution from requiring a mandatory reporter employed or serving as a volunteer for a person or institution to inform a representative of that person or institution that the reporter has made a report to the Child Abuse Hotline.

(B) Information disclosed to a person or institution under subdivision (a)(2)(A) of this section shall not be shared outside the organization and may only be shared within the organization to protect the health, safety, and welfare of the child.

(b) Unlawful restriction of child abuse reporting is a Class A misdemeanor.

History. Acts 2009, No. 749, § 1; 2013, No. 1086, § 6.

Amendments. The 2013 amendment rewrote the introductory language in (a)(1); substituted "or notify a person" for "from the person" in (a)(1)(B); and added (a)(2)(B).

12-18-210. Prohibition on intentionally causing, aiding, abetting, or assisting a child to obtain an abortion without parental consent.

(a)(1) A person shall not intentionally cause, aid, or assist a child to obtain an abortion without the consent or notification regarding judicial bypass of the requirement for consent under §§ 20-16-801, 20-16-804, and 20-16-805.

(2) Subdivision (a)(1) of this section does not affect § 20-16-808.

(b)(1) A person who violates subsection (a) of this section shall be civilly liable to the child and to the person or persons required to give the consent under § 20-16-801.

(2) A court may award:

(A) Damages to the person or persons adversely affected by a violation of subsection (a) of this section, including compensation for emotional injury without the need for personal presence at the act or event; and

(B) Attorney's fees, litigation costs, and punitive damages.

(3) An adult who engages in or consents to another person engaging in a sexual act with a child in violation of the Arkansas Criminal Code, § 5-1-101 et seq., that results in the child's pregnancy shall not be awarded damages under this section.

(c) An unemancipated child does not have capacity to consent to any action in violation of this section.

(d) Upon a petition by any person adversely affected or who reasonably may be adversely affected by the conduct, a court of competent jurisdiction may enjoin conduct that would violate this section upon a showing that the conduct:

(1) Is reasonably anticipated to occur in the future; or

(2) Has occurred in the past, whether with the same child or others, and that it is not unreasonable to expect that the conduct will be repeated.

History. Acts 2013, No. 725, § 6.

A.C.R.C. Notes. Acts 2013, No. 725, § 1, provided: "Findings and purposes.

"(a) The General Assembly finds that:

"(1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults;

"(2) The Child Maltreatment Act, § 12-18-101 et seq., requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children;

"(3) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting;

"(4) The societal costs of these crimes are also significant and affect the entire populace;

"(5) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers Arkansas's interest in protecting children from sexual crimes and provides the state with the tools necessary for successful investigations and prosecutions;

"(6) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and no one has the right to knowingly or willfully impede or circumvent this right;

"(7)(A) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement.

"(B) These activities of individuals other than a parent or guardian include transporting children across state lines to avoid Arkansas's parental involvement requirements for abortion; and

"(8) Such actions violate both the sanctity of the familial relationship and Arkansas's parental involvement law concerning abortion.

"(b) The General Assembly's purposes in enacting the Child Maltreatment Act are to further the important and compelling state interests of:

"(1) Protecting children from sexually predatory adults;

"(2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;

"(3)(A) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion.

"(B) Mandatory reporters must simply report allegations, suspicions, and pertinent facts.

"(C) Trained law enforcement or social services personnel are responsible for any investigation and for the ultimate disposition of the allegation or case;

"(4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;

"(5) Reducing the societal and economic burden on the populace that results from sexual crimes against children;

"(6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and

"(7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights."

Subchapter 3 — Child Abuse Hotline

12-18-303. Minimum requirements for a report to be accepted.

(a) Except as otherwise provided in this section, the Child Abuse Hotline shall accept a report of child maltreatment or suspected child maltreatment if:

(1) The allegations, if true, would constitute child maltreatment as defined under this chapter;

(2) Sufficient identifying information is provided to identify and locate the child or the child's family; and

(3) The child or the child's family is present in Arkansas or the incident occurred in Arkansas.

(b)(1) If the alleged offender resides in another state and the incident occurred in another state or country, the Child Abuse Hotline shall document receipt of the report, transfer the report to the Child Abuse Hotline of the state or country where the alleged offender resides or the incident occurred, and, if child protection is an issue, forward the report to the Department of Human Services or the equivalent governmental agency of the state or country where the alleged offender resides.

(2) Any record of receipt of a report under subdivision (b)(1) of this section may be used only within the department for purposes of administration of the program and shall not be disclosed except to:

(A) The prosecuting attorney; or

(B) A law enforcement agency.

(3) Data identifying a reporter under subdivision (b)(1) of this section shall be maintained under § 12-18-502.

(c) If the incident occurred in Arkansas and the victim, offender, or victim's parents no longer reside in Arkansas, the Child Abuse Hotline shall accept the report and the Arkansas investigating agency shall contact the other state and request assistance in completing the investigation, including an interview with the out-of-state subject of the report.

(d)(1) If the Child Abuse Hotline receives a report and the alleged offender is a resident of the State of Arkansas and the report of child maltreatment or suspected child maltreatment in the state or country

in which the act occurred would also be child maltreatment in Arkansas at the time the incident occurred, the Child Abuse Hotline shall refer the report to the appropriate investigating agency within the state so that the Arkansas investigative agency can investigate alone or in concert with the investigative agency of any other state or country that may be involved.

(2) The Arkansas investigating agency shall make an investigative determination and shall provide notice to the alleged offender that, if the allegation is determined to be true, the offender's name will be placed in the Child Maltreatment Central Registry.

(3) The other state may also conduct an investigation in this state that results in the offender's being named in a true report in that state and placed in the Child Maltreatment Central Registry of that state.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 6.

Amendments. The 2011 amendment, in (b)(1), substituted "document receipt of" for "screen out," deleted "screened-out" following "forward the," and added "or the equivalent governmental agency of the state or country where the alleged offender resides"; and inserted (b)(2) and (b)(3).

12-18-304. Qualifying reports of certain types of child maltreatment.

(a)(1) The Child Abuse Hotline shall accept a report of child maltreatment if any of the following intentional or knowing acts are alleged to occur:

(A) Throwing, kicking, burning, biting, or cutting a child;

(B) Striking a child with a closed fist;

(C) Shaking a child four (4) years of age or older; or

(D) Striking a child seven (7) years of age or older on the face or on the head.

(2) A report under this subsection shall not be determined to be true unless the child suffered an injury as the result of the act.

(b) The Child Abuse Hotline shall accept a report of child maltreatment if any of the following intentional or knowing acts are alleged to occur:

(1) Shaking a child three (3) years of age or younger;

(2) Striking a child six (6) years of age or younger on the face or on the head;

(3) Interfering with a child's breathing; or

(4) Pinching, biting, or striking a child in the genital area.

(c)(1) The Child Abuse Hotline shall accept a report of child maltreatment if a child suffers an injury as the result of a restraint.

(2) The report shall be determined not to be true if the injury is a minor temporary mark or causes transient pain and was an acceptable restraint as provided under this chapter.

(d)(1) The Child Abuse Hotline shall accept a report of child maltreatment involving a bruise to a child even if at the time of the report the bruise is not visible if the bruising occurred:

(A) Within the past fourteen (14) days; and

(B) As a result of child maltreatment as described under subsections (a)-(c) of this section.

(2) However, the report under this subsection shall not be determined to be true unless the existence of the bruise is corroborated.

(e) The Child Abuse Hotline shall not accept a report of:

(1) Environmental neglect pertaining to head lice unless the:

(A) Head lice is chronic; or

(B) Alleged victim currently has sores that require immediate medical attention; or

(2) Educational neglect from a school unless the school has complied with § 6-18-222.

History. Acts 2009, No. 749, § 1; 2013, No. 1486, § 1.

Amendments. The 2013 amendment substituted "child maltreatment" for "physical abuse" throughout the section; and added (e).

12-18-306. Reports naming an adult as the victim.

The Child Abuse Hotline shall accept a report of child sexual abuse, sexual contact, or sexual exploitation naming as the victim a person who is now an adult only if:

(1) The alleged offender is a caretaker of a child; and

(2) The person making the report is one (1) of the following:

(A) The adult victim;

(B) A law enforcement officer; or

(C) The alleged offender.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 8.

Amendments. The 2013 amendment in the introductory language inserted "child" before "sexual abuse" and substituted "as the victim a person who is now an adult" for "an adult as the victim"; deleted former (2)(C) and (D) and redesignated former (E) as (C).

12-18-308. Reports of injury to a child's intellectual, emotional, or psychological development.

The Child Abuse Hotline shall accept a report of injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior only if the reporter is:

(1) A medical or mental health professional;

(2) A school counselor, if the child did not disclose to the teacher;

(3) A teacher; or

(4) A day care center worker.

History. Acts 2009, No. 749, § 1; 2011, No. 784, § 1.

Amendments. The 2011 amendment inserted (2) and redesignated the remaining subdivisions accordingly.

12-18-309. Reports alleging that a child is dependent.

The Child Abuse Hotline shall accept telephone calls or other communications alleging that a child is a dependent juvenile, as defined in § 9-27-303, and shall immediately refer this information to the Department of Human Services.

History. Acts 2009, No. 749, § 1; 2011, No. 779, § 18; 2013, No. 1006, § 9.

Amendments. The 2011 amendment inserted "juvenile."

The 2013 amendment substituted "dependent" for "dependent neglected" in the section heading and in section text; and substituted "9-27-303" for "9-27-303(18)."

12-18-310. Referrals on children born with Fetal Alcohol Spectrum Disorder.

(a) All health care providers involved in the delivery or care of infants shall:

(1) Contact the Department of Human Services regarding an infant born and affected with a Fetal Alcohol Spectrum Disorder; and

(2) Share all pertinent information, including health information, with the department regarding an infant born and affected with a Fetal Alcohol Spectrum Disorder.

(b) The department shall accept referrals, calls, and other communications from health care providers involved in the delivery or care of infants born and affected with a Fetal Alcohol Spectrum Disorder.

(c) The department shall develop a plan of safe care for infants affected with a Fetal Alcohol Spectrum Disorder.

History. Acts 2011, No. 1143, § 7.

Subchapter 4 — Reporting Suspected Child Maltreatment

SECTION.

12-18-402. Mandated reporters.

(a) An individual listed as a mandated reporter under subsection (b) of this section shall immediately notify the Child Abuse Hotline if he or she:

(1) Has reasonable cause to suspect that a child has:

(A) Been subjected to child maltreatment; or

(B) Died as a result of child maltreatment; or

(2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

(b) The following individuals are mandated reporters under this chapter:

(1) A child care worker or foster care worker;

(2) A coroner;

(3) A day care center worker;

(4) A dentist;

(5) A dental hygienist;
(6) A domestic abuse advocate;
(7) A domestic violence shelter employee;
(8) A domestic violence shelter volunteer;
(9) An employee of the Department of Human Services;
(10) An employee working under contract for the Division of Youth Services of the Department of Human Services;
(11) A foster parent;
(12) A judge;
(13) A law enforcement official;
(14) A licensed nurse;
(15) Medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
(16) A mental health professional or paraprofessional;
(17) An osteopath;
(18) A peace officer;
(19) A physician;
(20) A prosecuting attorney;
(21) A resident intern;
(22) A public or private school counselor;
(23) A school official, including without limitation institutions of higher education;
(24) A social worker;
(25) A surgeon;
(26) A teacher;
(27) A court-appointed special advocate program staff member or volunteer;
(28) A juvenile intake or probation officer;
(29) A clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member:

(A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission;

(30) An employee of a child advocacy center or a child safety center;
(31) An attorney ad litem in the course of his or her duties as an attorney ad litem;
(32)(A) A sexual abuse advocate or sexual abuse volunteer who works with a victim of sexual abuse as an employee of a community-based victim service or mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families.

(B) A sexual abuse advocate or sexual abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(33) A rape crisis advocate or rape crisis volunteer;

(34)(A) A child abuse advocate or child abuse volunteer who works with a child victim of abuse or maltreatment as an employee of a community-based victim service or a mental health agency such as Safe Places, United Family Services, or Centers for Youth and Families.

(B) A child abuse advocate or child abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(35) A victim/witness coordinator;

(36) A victim assistance professional or victim assistance volunteer;

(37) An employee of the Crimes Against Children Division of the Department of Arkansas State Police;

(38) An employee of a reproductive healthcare facility; and

(39) A volunteer at a reproductive healthcare facility.

(c)(1) A privilege or contract shall not prevent a person from reporting child maltreatment when he or she is a mandated reporter and required to report under this section.

(2) An employer or supervisor of an employee identified as a mandated reporter shall not prohibit an employee or a volunteer from directly reporting child maltreatment to the Child Abuse Hotline.

(3) An employer or supervisor of an employee identified as a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting child maltreatment to the Child Abuse Hotline.

History. Acts 2009, No. 749, § 1; 2009, No. 1409, § 1; 2011, No. 1143, § 8; 2013, No. 725, § 7; 2013, No. 1086, §§ 7, 8.

A.C.R.C. Notes. Acts 2013, No. 725, § 1, provided: "Findings and purposes.

"(a) The General Assembly finds that:

"(1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults;

"(2) The Child Maltreatment Act, § 12-18-101 et seq., requires caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals to report suspected incidents of sexual crimes against children;

"(3) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting;

"(4) The societal costs of these crimes are also significant and affect the entire populace;

"(5) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers Arkansas's interest in protecting children from sexual crimes and provides the state with the tools necessary for successful investigations and prosecutions;

"(6) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and no one has the right to knowingly or willfully impede or circumvent this right;

"(7)(A) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement.

"(B) These activities of individuals other than a parent or guardian include transporting children across state lines to avoid Arkansas's parental involvement requirements for abortion; and

"(8) Such actions violate both the sanctity of the familial relationship and Arkansas's parental involvement law concerning abortion.

"(b) The General Assembly's purposes in enacting the Child Maltreatment Act are to further the important and compelling state interests of:

"(1) Protecting children from sexually predatory adults;

"(2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;

"(3)(A) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion.

"(B) Mandatory reporters must simply report allegations, suspicions, and pertinent facts.

"(C) Trained law enforcement or social services personnel are responsible for any investigation and for the ultimate disposition of the allegation or case;

"(4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;

"(5) Reducing the societal and economic burden on the populace that results from sexual crimes against children;

"(6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and

"(7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights."

Amendments. The 2011 amendment added (b)(37).

The 2013 amendment by No. 725 added (b)(38) and (b)(39).

The 2013 amendment by No. 1086 added "or paraprofessional" in (b)(16); inserted "public or private" in (b)(22); added "including without limitation institutions of higher education" in (b)(23); and substituted "An employer or supervisor of an employee identified as a mandated reporter" for "A school, Head Start program, or day care facility" in (c)(1), (2), and (3).

Subchapter 5 — Notice Procedures After a Report of Suspected Child Maltreatment Has Been Made

SECTION.

12-18-503. Notification generally.

The Department of Human Services shall notify the following of any report of child maltreatment within five (5) business days:

(1) The legal parents, legal guardians, and current foster parent of a child in foster care who is named as a victim or alleged offender;

(2) The attorney ad litem for any child named as the victim or alleged offender;

(3) A person appointed by the court as the Court Appointed Special Advocate volunteer for any child named as the victim or alleged offender;

(4) Counsel in a dependency-neglect case or family in need of services case when the child is named as a victim or alleged offender;

(5) The attorney ad litem and Court Appointed Special Advocate volunteer for all other children in the same foster home if the child maltreatment occurred in a foster home;

(6) The attorney ad litem and court-appointed special advocate for any child in foster care when the alleged juvenile offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate's client;

(7) The responsible multidisciplinary team; and

(8) A mandated reporter, if the mandated reporter made the initial notification of suspected child maltreatment and the notification has been accepted for investigation.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 9.

Amendments. The 2011 amendment substituted "offender" for "aggressor" in (6); substituted "responsible" for "appropriate" in (7); and added (8).

12-18-506. Notice when the alleged offender works with children, the elderly, an individual with a disability, an individual with a mental illness, is engaged in child-related activities, or is a juvenile.

(a) If the Child Abuse Hotline receives a report naming as an alleged offender a person who is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the Department of Human Services has determined that children, the elderly, or individuals with a disability or mental illness under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender, the department may notify the following of the report made to the Child Abuse Hotline:

(1) The alleged offender's employer;

(2) The school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;

(3) The person in charge of a paid or volunteer activity; and

(4) The appropriate licensing or registering authority to the extent necessary to carry out its official responsibilities.

(b) The department shall promulgate rules to ensure that notification required under this section is specifically approved by a responsible manager in the department before the notification is made.

(c) If the department, based on information gathered during the course of the investigation, determines that there is no preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

(d)(1) If the Child Abuse Hotline receives a report naming a juvenile as an alleged offender who is in a setting or circumstances where other children may be at risk, the department may notify the entity or person in charge about the Child Abuse Hotline report.

(2) The department shall promulgate rules to ensure that the notification required under this section is specifically approved by a responsible manager in the department before notification is made.

(3) If the department, based on information gathered during the course of the investigation, determines that there is no preponderance

of the evidence indicating that children appear to be at risk, the department shall immediately notify the person or entity originally notified under subdivision (d)(1) of this section of that information.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 10.

Amendments. The 2013 amendment rewrote the section heading and introductory language in (a); and added (d).

12-18-507. Notice when the alleged victim is a resident of a facility licensed, registered, or operated by the state.

(a) If the Child Abuse Hotline receives a report that a client or a resident of a facility licensed or registered by the State of Arkansas has been subjected to child maltreatment while at the facility, the Department of Human Services shall immediately notify the facility director and the facility's licensing or registering authority of the Child Abuse Hotline's receipt of a report of suspected child maltreatment.

(b) If the Child Abuse Hotline receives a report that a client or a resident of a facility operated by the department or a facility operated under contract with the department has been subjected to child maltreatment while at the facility, the department shall immediately notify the appropriate division director and the facility director of the Child Abuse Hotline's receipt of initial report of suspected child maltreatment.

(c) If the Child Abuse Hotline receives a report that a child in the custody of the department has been subjected to child maltreatment while in the custody of the department, the department shall immediately notify the appropriate division director of the Child Abuse Hotline's receipt of an initial report of suspected child maltreatment.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 11.

Amendments. The 2013 amendment added (c).

Subchapter 6 — Investigative Proceedings

12-18-601. Assignment to investigative agency.

(a) When a person, agency, corporation, or partnership then providing substitute care for any child in the custody of the Department of Human Services or a Department of Human Services employee or employee's spouse or other person residing in the home is reported as being suspected of child maltreatment, the investigation shall be conducted pursuant to procedures established by the Department of Human Services.

(b) The procedures described in subsection (a) of this section shall include referral of allegations to the Department of Arkansas State Police and any other appropriate law enforcement agency if the allegation involves severe maltreatment.

(c) Upon referral, the Department of Arkansas State Police shall investigate the allegations.

(d)(1) The Department of Human Services may develop and implement triage procedures for accepting and documenting reports of child maltreatment of a child not at risk of imminent harm if an appropriate referral is made to a community organization or voluntary preventive service.

(2) The Department of Human Services shall not implement this section until rules necessary to carry out this subsection have been promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 10.

Amendments. The 2011 amendment substituted "accepting and documenting" for "screening out" in (d)(1).

12-18-602. Initiation of the investigation.

(a)(1) The Department of Human Services shall cause an investigation to be made upon receiving initial notification of suspected child maltreatment.

(b)(1) All investigations shall begin within seventy-two (72) hours.

(2) However, the investigation shall begin within twenty-four (24) hours if:

(A) The allegation is severe maltreatment, excluding an allegation of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago or the alleged victim does not currently have contact with the alleged offender; or

(B) The allegation is that a child has been subjected to neglect as defined in § 12-18-103(13)(B).

(c) At the initial time of contact with the alleged offender, the person conducting the investigation shall advise the alleged offender of the allegations made against the alleged offender in a manner that is consistent with the laws protecting the rights of the person who made the report.

(d) Upon initiation of the investigation, the primary focus of the investigation shall be whether or not the alleged offender has access to

children and whether or not children are at risk such that children need to be protected.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 11.

Amendments. The 2011 amendment substituted "more than one (1) year ago or" for "more than one (1) year ago and" in (b)(2)(A).

12-18-604. Services during the investigation.

(a) The Department of Human Services shall have the authority to make referrals or provide services during the course of the child maltreatment investigation.

(b)(1) The Department of Human Services may petition a circuit court to allow an investigator to access the controlled substance database.

(2) The court may grant a petition under this subsection if the Department of Human Services demonstrated probable cause that:

(A) The person has one (1) or more prescription drugs; and

(B) The baby or the person tested positive for prescription drugs at the time of the birth of the baby.

History. Acts 2009, No. 749, § 1; 2013, No. 1090, § 1.

Amendments. The 2013 amendment added (b).

12-18-605. Investigative interviews.

(a) An investigation of child maltreatment or suspected child maltreatment under this chapter shall include interviews with:

(1) The child as provided under § 12-18-608;

(2) The parents, both custodial and noncustodial;

(3) If neither parent is the alleged offender, the alleged offender; and

(4) Any other relevant persons.

(b) If, after exercising reasonable diligence in conducting any or all interviews, the subjects of the interviews cannot be located or are unable to communicate, the efforts to conduct the interviews shall be documented and the investigation shall proceed under this chapter.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 12.

Amendments. The 2013 amendment substituted "§ 12-18-608" for "subsection (b) of this section" in (a)(1).

12-18-607. When the alleged offender is not a family member or not living in the home with the alleged victim.

If the alleged offender is not a family member nor living in the home with the alleged victim, the investigation under this chapter shall seek to ascertain:

(1) The existence, cause, nature, and extent of child maltreatment;

(2) The identity of the person responsible for the child maltreatment;

(3) The existence and extent of previous child maltreatment perpetrated by the alleged offender;

(4) The names and conditions of any children of the alleged offender and whether these children have been maltreated or are at risk of child maltreatment;

(5) If the report is determined to be true and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under the care of the alleged offender, to the extent practical, and whether these children have been maltreated or are at risk of maltreatment; and

(6) All other pertinent and relevant data.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 13.

Amendments. The 2013 amendment deleted "If the report is determined to be true" from the beginning of subdivision (4).

12-18-608. Interview of the alleged child victim, siblings of a child victim, or any other children in the home or under the care of an alleged offender.

(a) A person conducting an interview with a child victim, sibling of a child victim, or any other children in the home or under the care of an alleged offender shall have the discretion:

(1) In the child's best interest, to limit the persons allowed to be present when a child is being interviewed concerning allegations of child maltreatment; and

(2) As it relates to the integrity of the investigation, to limit persons present during an interview.

(b)(1) The interview with the child victim, siblings of a child victim, or any other children in the home or under the care of an alleged offender shall be conducted separate and apart from the alleged offender or any representative or attorney for the alleged offender.

(2) However, if the age or abilities of the child victim render an interview impossible, the investigation shall include observation of the child.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 14.

Amendments. The 2013 amendment inserted "siblings of a child victim, or any other children in the home or under the care of an alleged offender" three times in the section and substituted "interview with" for "investigation of" in (a).

12-18-610. Access to the child's school records.

(a) A person conducting an investigation under this chapter shall be allowed access to the child's public and private school records during the course of the child maltreatment investigation.

(b) Upon request, a public or private school shall provide the child's records free of charge to the person conducting the investigation.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 12.

Amendments. The 2011 amendment added (b).

12-18-615. Radiology procedures, photographs, electronic media, and medical records.

(a) A person who is required to make a report under this chapter may take or cause to be taken radiology procedures and photographs or compile medical records that may be relevant as to the existence or extent of child maltreatment.

(b) A hospital, clinic, child safety center, or the Department of Human Services may make electronic media that may be relevant as to the existence or extent of child maltreatment.

(c) The Department of Human Services or law enforcement officials shall be provided at no cost a copy of the results of radiology procedures, electronic media, photographs, or medical records upon request.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 15.

Amendments. The 2013 amendment substituted "electronic media" for "videotapes" throughout and substituted "child safety center, or the Department of Human Services" for "or" in (b).

12-18-616. Timing.

(a)(1) Except as otherwise provided in this section, an investigative determination shall be made in each investigation under this chapter within forty-five (45) days regardless of whether the investigation is conducted by the Department of Human Services, the Crimes Against Children Division of the Department of Arkansas State Police, or local law enforcement.

(2) However, this procedural requirement shall not be considered as a factor to alter the investigative determination in any judicial or administrative proceeding.

(3)(A) An extension of an additional fifteen (15) days to make an investigative determination is permitted.

(B) The Department of Human Services and the Crimes Against Children Division of the Department of Arkansas State Police shall respectively promulgate rules pertaining to the extension of time to make an investigative determination.

(b) An investigation shall not be transferred to inactive status because an investigator is awaiting documentary evidence.

History. Acts 2009, No. 749, § 1; 2013, No. 426, § 1.

Amendments. The 2013 amendment substituted "forty-five (45) days" for "thirty (30) days" in (a)(1); added (a)(3); deleted former (b); and redesignated former (c) as (b).

12-18-620. Release of information on pending investigation.

(a) Information on a pending investigation under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify a person who made a report under this chapter unless a court of competent jurisdiction orders release of the information after

the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(e) Information on a pending investigation, including protected health information, shall be released upon request to:

(1) The Department of Human Services;

(2) Law enforcement;

(3) The prosecuting attorney;

(4) The responsible multidisciplinary team;

(5) Attorney ad litem of the alleged victim or offender;

(6) Court Appointed Special Advocate of the alleged victim or offender;

(7) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(8) Any department division director or facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter;

(9) Any facility director receiving notice of a Child Abuse Hotline report pursuant to this chapter; and

(10)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

(f) Information on a pending investigation, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of the investigation will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a pending investigation, including protected health information, may be released to or disclosed in the circuit court if the victim or alleged offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 13.

Amendments. The 2011 amendment substituted "responsible" for "appropriate" in (e)(4).

Subchapter 7 — Investigative Findings

12-18-701. Generally.

CASE NOTES

Admission Error, But No Prejudice.

Although admission of portions of an investigator's report to the prosecutor were hearsay and were admitted in error, the child's grandmother failed to show prejudice because the trial court's ruling showed that it relied on the child's statements in a recorded interview in determining that she was dependent neglected on the basis of sexual abuse. The DVD of the interview was entered into evidence independently and constituted sufficient evidence to support the dependency neglect adjudication without any reference to the prosecuting attorney's report. Berthelot v. Ark. Dep't of Human Servs., 2012 Ark. App. 249, — S.W.3d — (2012).

12-18-702. Investigative determination.

Upon completion of an investigation under this chapter, the Department of Human Services shall determine whether the allegations of child maltreatment are:

(1)(A) Unsubstantiated.

(B) An unsubstantiated determination shall be entered when the allegation is not supported by a preponderance of the evidence;

(2)(A) True.

(B) A true determination shall be entered when the allegation is supported by a preponderance of the evidence.

(C) A determination of true but exempted, which means that the offender's name shall not be placed in the Child Maltreatment Central Registry, shall be entered if:

(i) A parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child, but in lieu of treatment the child is being furnished with treatment by spiritual means alone, through prayer, in accordance with a recognized religious method of healing by an accredited practitioner;

(ii) The offender is an underaged juvenile offender;

(iii) The report was true for neglect as defined under § 12-18-103(13)(B); or

(iv) The offender is a juvenile less than fourteen (14) years of age; or

(3)(A) Inactive.

(B) If the investigation cannot be completed, the investigation shall be determined incomplete and placed in inactive status.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 14; 2013, No. 1006, § 16.

Amendments. The 2011 amendment substituted "offender" for "aggressor" in (2)(C)(ii); and inserted (2)(C)(iv).

The 2013 amendment rewrote (2)(C)(iv).

12-18-703. Notice generally.

(a) The Department of Human Services shall notify each alleged offender of the child maltreatment investigative determination whether true or unsubstantiated.

(b)(1) In every case in which a report is determined to be true, the department shall notify the alleged offender of the investigative determination by certified mail, restricted delivery, or process server.

(2) Failure of service under subdivision (b)(1) of this section is not deemed failure of notice if the alleged offender has actual notice.

(c)(1) The notice of the investigative determination shall include a statement that the request for an administrative hearing shall be made within thirty (30) days of the receipt of notice under subsection (b) of this section.

(2) An alleged offender is not entitled to an automatic administrative hearing if:

(A) The allegations are determined to be true; and

(B) The alleged offender's name is exempt from placement in the Child Maltreatment Central Registry.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 15; 2013, No. 1006, § 17.

Amendments. The 2011 amendment added (b)(2).

The 2013 amendment added (c).

12-18-704. Notice if the investigative determination is true but exempted and the alleged offender is a child.

If the investigative determination of the report was determined true but exempted under § 12-18-702(2)(C)(ii) and the alleged offender is a child at the time the act or omission occurred, the Department of Human Services shall notify the legal parents and legal guardians of the investigative determination and that the child's name shall not be placed in the Child Maltreatment Central Registry, and the alleged offender may petition for an administrative hearing.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 15; 2013, No. 1006, § 18.

Amendments. The 2011 amendment inserted "investigative determination of the" and "but exempted under § 12-18-702(2)(C)(ii) or § 12-18-702(2)(C)(iv)" and deleted "under ten (10) years of age" following "is a child."

The 2013 amendment deleted "or § 12-18-702(2)(C)(iv)" following "§ 12-18-702(2)(C)(ii)" and added "and the alleged offender may petition for an administrative hearing" to the end.

12-18-705. Notice if the alleged offender is at least fourteen years of age and less than eighteen years of age.

(a) If the report was determined true and the alleged offender is at least fourteen (14) years of age and less than eighteen (18) years of age at the time the act or omission occurred, a notice shall be given as provided in this section.

(b) The notice under this section shall be provided as follows:

(1) If the alleged offender is in foster care, the Department of Human Services shall notify the alleged offender's counsel and the legal parents, legal guardians, and current foster parents of the alleged offender; or

(2) If the alleged offender is not in foster care, the department shall notify the legal parents and legal guardians of the alleged offender.

(c) The notice under this section shall include the following:

(1) The investigative determination, excluding data that would identify the person who made the report to the Child Abuse Hotline;

(2) A statement that the matter has been referred for an automatic administrative hearing that may be waived only by the alleged offender or his or her parent or legal guardian in writing;

(3) The potential consequences to the alleged offender if the alleged offender's name is placed in the Child Maltreatment Central Registry;

(4) A statement that the alleged offender has a right to have an attorney and if the person cannot afford an attorney to contact the Center for Arkansas Legal Services;

(5) A statement that if the alleged offender's name is placed on the registry, the alleged offender's name may be automatically removed after one (1) year or the alleged offender may be able to petition for removal after one (1) year, depending on the finding;

(6) A statement that the administrative hearing may take place in person if requested by the alleged offender, the alleged offender's parent or guardian, or the alleged offender's attorney within thirty (30) days from the date that the alleged offender receives notification under this section; and

(7) The name of the person making the notification, his or her title or position, and current contact information.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 15; 2013, No. 1006, § 19.

Amendments. The 2011 amendment substituted "under eighteen (18) years of age" for "a child ten (10) years of age or older" in (a); substituted "alleged offender" for "child" or variant throughout (b)(1) and (b)(2); substituted "alleged offender" for "juvenile offender" or "alleged juvenile offender" or variant throughout (c)(2), (c)(3), and (c)(6); substituted "alleged offender" for "person" or variant throughout (c)(4) and c)(5); and deleted "to the alleged juvenile offender" following "notification" in (b)(7).

The 2013 amendment substituted "at least fourteen years of age and less than eighteen" for "under eighteen" in the section heading and (a).

12-18-706. Notice if the alleged offender is eighteen years of age or older.

Notification to an alleged offender who was eighteen (18) years of age or older at the time of the act or omission that resulted in a true finding of child maltreatment shall include the following:

(1) The investigative determination, excluding data that would identify the person who made the report to the Child Abuse Hotline;

(2) A statement that the person named as the alleged offender of the true report may request an administrative hearing;

(3) A statement that the request must be made to the Department of Human Services within thirty (30) days of receipt of the service or certified mailing of the notice of determination;

(4) The potential consequences to the person if the person's name is placed on the Child Maltreatment Central Registry;

(5) A statement that the person has a right to have an attorney and that if the person cannot afford an attorney to contact the Center for Arkansas Legal Services;

(6) A statement that if the person's name is placed on the registry, the person's name may be automatically removed after one (1) year or the person may be able to petition for removal after one (1) year, depending on the finding;

(7) The name of the person making the notification to the alleged offender, his or her title or position, and current contact information; and

(8) A statement that the administrative hearing may take place in person if requested by the alleged offender or the alleged offender's attorney within thirty (30) days from the date that the alleged offender receives notification under this section.

History. Acts 2009, No. 749, § 1; 2011, No. 779, § 19.

Amendments. The 2011 amendment deleted "juvenile" preceding "offender" in (7).

12-18-707. Notice when the alleged offender works with children, the elderly, an individual with a disability, or an individual with a mental illness, is engaged in child-related activities, or is a juvenile.

(a) If the child maltreatment investigative determination names as an alleged offender a person who is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the Department of Human Services has determined that children, the elderly, or individuals with a disability or mental illness under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender, the department may notify the following of the investigative determination:

(1) An alleged offender's employer;

(2) A school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;

(3) A person in charge of a paid or volunteer activity; and

(4) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(b) The department shall promulgate rules that will ensure that notification required under this section is specifically approved by a responsible manager in the department before the notification is made.

(c) If the department later determines that there is no preponderance of the evidence indicating that children under the care of the alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

(d)(1) If the child maltreatment investigation names as an alleged offender a juvenile who is in a setting or circumstance where other children appear to be at risk, the department may notify the entity or person in charge about the investigative determination.

(2) The department shall promulgate rules to ensure that the notification required under this section is specifically approved by a responsible manager in the department before notification is made.

(3) If the department later determines that there is no preponderance of the evidence indicating that other children are at risk or if the investigative determination is overturned, the department shall immediately notify the entity or person originally notified under subdivision (d)(1) of this section of that information.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 20.

Amendments. The 2013 amendment rewrote the section heading and introductory language in (a) and added (d).

12-18-708. Miscellaneous notice requirements.

(a) The Department of Human Services shall confirm an investigative determination upon request from the following:

(1) The responsible multidisciplinary team;

(2) The juvenile division of circuit court if the victim or offender has an open dependency-neglect or family in need of services case;

(3) The attorney ad litem for any child who is named as the victim or offender;

(4) The court-appointed special advocate for any child named as the alleged victim or offender;

(5) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(6) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;

(7) Any facility director receiving notice of a Child Abuse Hotline report under this chapter;

(8) The attorney ad litem and court-appointed special advocate volunteer of all other children in the same foster home if the child maltreatment occurred in a foster home; and

(9) The attorney ad litem and court-appointed special advocate volunteer for any child in foster care when the alleged juvenile offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate's client.

(b) If the investigative determination is true, notification of the investigative determination shall be provided to the school where the victim child is enrolled. However, the name of the alleged offender shall not be identified.

(c) The department may notify the persons or entities listed in subsection (a) of this section of the investigative determination, if the department determines the notification is necessary to ensure the health or safety of the child.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 16.

Amendments. The 2011 amendment, in the introductory language of (a), substituted "The Department of Human Services shall confirm" for "Notification of" and "upon request from the following" for "shall be provided to"; substituted "responsible" for "appropriate" in (a)(1); substituted "juvenile division of circuit court" for "circuit court judge" in (a)(2); rewrote (c)(8) and (c)(9); deleted former (b) and redesignated the following subsection accordingly; and added (c).

12-18-709. Confidentiality.

(a) Notice of an investigative determination under this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of

competent jurisdiction orders release of the information after the court has reviewed, in camera, the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d)(1) Notification of the investigative determination of severe maltreatment shall be provided to the appropriate law enforcement agency and the prosecuting attorney.

(2) The prosecuting attorney and law enforcement may provide written notice to the department that the department does not need to provide notice of investigative determinations.

(3) Upon receiving the notification, the department shall not be required to provide notification of the investigative determination.

(e) The department shall notify each subject of the report of the investigative determination whether true or unsubstantiated.

(f) The department shall notify the alleged offender's legal parents, legal guardians, and foster parents of the investigative determination if the:

(1) Investigative determination is unsubstantiated; and

(2) Alleged offender is:

(A) Under eighteen (18) years of age; and

(B) In foster care.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 17.

Amendments. The 2011 amendment added (f).

12-18-710. Release of information on true investigative determination pending due process.

(a) Information on a completed true investigation pending due process as referenced in this chapter is confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(c)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding the information in any notice provided by the department.

(d) The department may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile offender.

(e) Information on a completed investigation, including protected health information, pending due process shall be released upon request to:

(1) The alleged offender;

(2) The department;

(3) Law enforcement;

(4) The prosecuting attorney;

(5) The responsible multidisciplinary team;

(6) Attorney ad litem for the victim or offender;

(7) Court-appointed special advocate for the victim or offender;

(8) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(9) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this chapter;

(10) Any facility director receiving notice of a Child Abuse Hotline report under this chapter; and

(11)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body.

(f) Information on a true investigative determination, including protected health information, may be released to or disclosed in a circuit court child custody case or similar case if:

(1) No seventy-two-hour hold has been exercised under this chapter or pleadings filed pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(2) Written notice of intent to request release or disclosure is provided to the investigating agency at least five (5) days before the date for release or disclosure;

(3) The investigating agency has the opportunity to appear before the court and be heard on the issue of release or disclosure;

(4) The information gathered by the investigative agency is necessary for the determination of an issue before the court;

(5) Waiting until completion of due process will jeopardize the health or safety of the child in the custody case;

(6) A protective order is issued to prevent redisclosure of the information provided by the investigating agency or the information is released or disclosed only to the court in camera; and

(7) Release or disclosure of the information will not compromise a criminal investigation.

(g) Information on a true investigative determination, including protected health information, may be released to or disclosed in the circuit court if the victim or offender has an open dependency-neglect or family in need of services case before the circuit court.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 18.

Amendments. The 2011 amendment substituted "underaged juvenile offender" for "underaged juvenile aggressor" in (d); and substituted "responsible" for "appropriate" in (e)(5).

12-18-711. Fee for copying investigative file.

(a) Except as provided under subsection (b) of this section, the Department of Human Services may charge:

(1) A reasonable fee not to exceed ten dollars ($10.00) for researching, copying, or mailing records from a child maltreatment investigative file under this chapter; and

(2) A reasonable fee for reproducing copies of electronic media, such as audio tapes, video recordings, compact discs, or DVDs, and photographs.

(b) A fee shall not be charged to:

(1) A nonprofit or volunteer agency that requests searches of the investigative files; or

(2) A person who is indigent.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 21.

Amendments. The 2013 amendment substituted "or mailing records from a child maltreatment investigative file" for "and mailing records of an investigative file" in (a)(1); and substituted "electronic media, such as audio tapes, video recordings, compact discs, or DVDs and photographs" for "tapes and photographs" in (a)(2).

12-18-712. Mental health services for alleged sex offenders under eighteen (18) years of age and the victim.

(a) If an investigative determination of a report under this chapter was determined true and the alleged sex offender is a child under eighteen (18) years of age at the time the act or omission occurred, the alleged sex offender and the victim shall be referred for mental health services, including a mental health evaluation and treatment if determined necessary by a mental health professional.

(b) The Department of Human Services shall:

(1) Provide the parents or legal guardians of the alleged sex offender and the victim with a list of the mental health professionals or agencies available to evaluate and treat the alleged sex offender and the victim, if necessary; and

(2) Assist the parents or legal guardians of the alleged sex offender and the victim with a referral for a mental health evaluation, if necessary.

History. Acts 2013, No. 1200, § 1.

Subchapter 8 — Administrative Hearings

12-18-801. Time to complete administrative hearing.

(a)(1)(A) The administrative hearing under this chapter shall begin within one hundred eighty (180) days from the date of the receipt of the request for a hearing.

(B) However, delays in completing the administrative hearing that are attributable to either party shall not count against the limit of one hundred eighty (180) days if the administrative law judge determines that good cause for the delay is shown by the party requesting the delay and the request for delay is made in writing and delivered to the Office of Appeals and Hearings of the Department of Human Services and all other parties.

(2)(A) The Department of Human Services shall report any failures to comply with this subsection for each quarter to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(B) The quarterly report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth shall include a written explanation of the failure of the department.

(b)(1) The limit of one hundred eighty (180) days for an administrative hearing under this chapter shall not apply if upon request of any party a stay is granted as permitted under this section.

(2) The administrative law judge may stay the case upon a showing by any party that there is an ongoing criminal or delinquency investigation regarding the occurrence that is the subject of the child maltreatment report.

(3)(A) If a criminal or delinquency proceeding is filed regarding the occurrence that is the subject of the child maltreatment report and a request for a stay is accompanied by the written notification of the date the criminal or delinquency proceeding was filed by a party, the administrative hearing shall be stayed for a period of not more than one (1) year from the date the criminal or delinquency proceeding is filed.

(B) The stay shall be lifted and the case set for a hearing upon the earlier of:

(i) A petition and showing by any party that there is good cause to conduct the administrative hearing before the conclusion of the criminal or delinquency proceeding;

(ii) The final disposition of the criminal or delinquency proceeding; or

(iii) The expiration of one (1) year from the date the criminal or delinquency proceeding was filed.

(C) A stay granted under this section may be extended after the one-year expiration upon a written notice from the requesting party that the criminal or delinquency investigation or proceeding is still ongoing.

(D)(i) It is the duty of the petitioner to report the final disposition of the criminal or delinquency proceeding to the Office of Appeals and Hearings of the Department of Human Services for a stay granted under subdivision (b)(3) of this section.

(ii) The case shall be dismissed and the petitioner's name placed on the Child Maltreatment Central Registry if the petitioner fails to provide a file-marked copy of the final disposition of the criminal or delinquency proceeding within thirty (30) days of the entry of the final disposition.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 19; 2013, No. 1006, § 22.

Amendments. The 2011 amendment, in (a)(1)(B), substituted "either party" for "the petitioner" and added "if the administrative law judge ... and all other parties."

The 2013 amendment rewrote the section.

12-18-802. Subpoenas — Service upon a child.

If any child served with a subpoena to be a witness in an administrative hearing is a party to an open dependency-neglect or family in need of services case, the child's attorney ad litem shall be provided a copy of the subpoena.

History. Acts 2009, No. 749, § 1; 2011, No. 1139, § 2.

Amendments. The 2011 amendment rewrote the section.

12-18-803. Privileged communications as evidence — Exception.

CASE NOTES

Cited: Riley v. State, 2012 Ark. 462, — S.W.3d —, 2012 Ark. LEXIS 503 (Dec. 13, 2012).

12-18-804. Defenses and affirmative defenses.

For any act or omission of child maltreatment that would be a criminal offense or an act of delinquency, any defense or affirmative defense, including the burden of proof regarding the affirmative defense, that would apply to the criminal offense or delinquent act is also cognizable in a child maltreatment proceeding with the exception of:

(1) A statute of limitation;

(2) Lack of capacity as a result of mental disease or defect under § 5-2-312; and

(3) Affirmative defenses under §§ 5-1-112 — 5-1-114.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 20.

Amendments. The 2011 amendment, in the introductory language, inserted "including the burden of proof regarding the affirmative defense" and added "with the exception of" at the end; and added (1) through (3).

12-18-805. Video teleconferencing and teleconferencing options.

(a)(1) An administrative law judge may conduct an administrative hearing under this chapter by video teleconference in lieu of an in-person hearing.

(2) If neither party requests that the administrative hearing be conducted in person, the administrative hearing shall be conducted telephonically.

(b) If any party requests an in-person administrative hearing within thirty (30) days from the date that the party receives notification of the investigative determination, the in-person administrative hearing shall be conducted in an office of the Department of Human Services nearest to the petitioner's residence unless the administrative law judge notifies the parties that the administrative hearing will be conducted via video teleconference.

(c)(1) The Office of Appeals and Hearings of the Department of Human Services shall designate the sites to be used for video teleconference administrative hearings.

(2) The office shall designate sites within ten (10) miles of the following cities:

(A) Arkadelphia;

(B) Booneville;

(C) Conway;

(D) Fayetteville;

(E) Jonesboro;

(F) Little Rock; and

(G) Warren.

(3) The office may designate additional sites for video teleconference administrative hearings.

(4) A site for a video teleconference administrative hearing shall include the location designated by the office that is nearest to the petitioner's residence.

(5) The administrative law judge and other parties may agree to appear at the location designated by the office or at any other designated administrative hearing locations that are convenient to them.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 23.

Amendments. The 2013 amendment inserted "of the investigative determination" in (b).

12-18-807. Administrative judgments and adjudications.

(a) If a court of competent jurisdiction adjudicates a question that is an issue to be determined by the Office of Appeals and Hearings of the Department of Human Services, the prevailing party to the judicial adjudication who is also a party to the administrative adjudication shall file a certified copy of the judicial adjudication with the office.

(b)(1) The office shall determine whether and to what extent the judicial adjudication has preclusive effect on the administrative adjudication by applying the principles of claim preclusion and issue preclusion.

(2) The office shall not readjudicate any precluded issues.

(c) If the judicial adjudication is modified or reversed, the office shall determine whether and to what extent any issue in the administrative adjudication remains precluded and shall schedule a hearing with respect to any matter that is no longer precluded.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 24.

Amendments. The 2013 amendment rewrote the section.

12-18-809. Confidentiality.

(a) An administrative hearing decision and the hearing record, including all exhibits, under this chapter are confidential and shall remain confidential upon the filing of an appeal with a circuit court or an appellate court.

(b) An administrative hearing decision and the hearing record, including all exhibits, under this chapter that uphold the agency investigative determination of true may be used or disclosed only as provided in this chapter.

(c) An administrative hearing decision and the hearing record, including all exhibits, under this chapter that overturn the agency investigative determination of true may be used or disclosed only as provided in this chapter.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 21.

Amendments. The 2011 amendment inserted "and the hearing record, including all exhibits" in (a), (b), and (c); and deleted "and all exhibits submitted at the hearing" following "under this chapter" in (a).

12-18-811. Expedited administrative hearings.

(a)(1) If an alleged offender timely requests an administrative hearing, the Department of Human Services may request that the administrative hearing be expedited if the alleged offender is engaged in child-related activities or employment or the alleged offender is employed or a volunteer with persons with disabilities, persons with mental illnesses, or elderly persons.

(2) The alleged offender shall have five (5) days from date of receipt of the request for an expedited administrative hearing to object to any request to expedite the administrative hearing.

(b) The expedited administrative hearing shall be granted if any of the following are at risk because of the alleged offender's employment or volunteer activities:

(1) Children;

(2) The elderly; or

(3) Persons with disabilities or mental illnesses.

(c) If the administrative hearing is expedited, the department shall immediately make the investigative file available to the alleged offender.

(d)(1) The department may charge:

(A) A reasonable fee not to exceed ten dollars ($10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tapes, video tapes, compact discs, DVDs, and photographs.

(2) A fee shall not be charged to a person who is indigent.

(e)(1) Unless waived by the alleged offender, the expedited administrative hearing process shall not be held until at least thirty (30) days have elapsed after the investigative file is made available to the alleged offender.

(2) As used in this section, "made available" means notification to the offender or his or her attorney that a copy of the investigative record is available for pickup at the department office in the county in which the alleged offender resides or in the department office in the county designated by the alleged offender or his or her attorney.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 25.

Amendments. The 2013 amendment substituted "or mailing records from a child maltreatment investigative file" for "and mailing records of an investigative file" in (d)(1)(A); and substituted "electronic media, such as audio tapes, video recordings, compact discs, or DVDs and photographs" for "tapes and photographs" in (d)(1)(B).

12-18-812. Preliminary administrative hearing.

(a) If the Department of Human Services is unable to notify an offender of an investigative determination under this chapter, the department may request a preliminary administrative hearing to allow

provisional placement of the offender's name in the Child Maltreatment Central Registry.

(b) The department must prove that the department diligently attempted to notify the alleged offender of the investigative determination, specifically, that the department used a reasonable degree of care to ascertain the offender's whereabouts and notify the offender.

(c)(1) The department shall notify the administrative law judge of any known criminal action related to the investigation.

(2) A preliminary administrative hearing shall proceed even if:

(A) There is an ongoing criminal or delinquency investigation regarding the occurrence that is the subject of the child maltreatment investigation; or

(B) Criminal or delinquency charges are filed or will be filed regarding the occurrence that is the subject of the child maltreatment investigation.

(d) At the preliminary administrative hearing, the administrative law judge shall determine whether a prima facie case exists that:

(1) The offender committed child maltreatment, that is, whether a preponderance of the evidence supports a finding that the allegations are true; and

(2) A child, elderly person, person with a disability, or person with mental illness may be at risk of harm.

(e) If the administrative law judge determines there is not a prima facie case, the department shall not at that time place the alleged offender's name in the registry but may continue to provide notice to the alleged offender for a regular administrative hearing.

(f) If the administrative law judge determines there is a prima facie case, the administrative law judge shall direct that the offender's name shall be provisionally placed in the registry.

(g)(1) If an offender's name is provisionally placed in the registry the alleged offender may request a regular administrative hearing within thirty (30) days of receipt of the notice of the investigative determination.

(2) Failure to timely request a regular administrative hearing shall result in a finding by the administrative law judge that the provisional designation shall be removed and the offender's name shall be officially placed in the registry.

History. Acts 2009, No. 749, § 1; 2013, No. 1006, § 26.

Amendments. The 2013 amendment rewrote (c).

12-18-813. Notice of investigative determination upon satisfaction of due process.

(a)(1) Due process has been satisfied when:

(A) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred was provided written notice of the true investigative determination as required by this chapter but failed to timely request an administrative hearing;

(B) The alleged offender eighteen (18) years of age or older at the time the act or omission occurred timely requested an administrative hearing and a decision has been issued by the administrative law judge; or

(C) The alleged offender was a child at the time the act or omission occurred and the child or his or her legal parent or legal guardian waived the administrative hearing or the administrative law judge issued a decision.

(2) Upon satisfaction of due process, if the investigative determination is true, the alleged offender's name shall be placed in the Child Maltreatment Central Registry.

(b)(1) Upon satisfaction of due process and if the investigative determination is true, the Department of Human Services shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report including the name and relationship of the offender to the maltreated child and the services offered or provided by the department to the child.

(2) Upon completion of due process, the department shall provide the local educational agency, specifically the school counselor at the school the maltreated child attends, a report indicating the department's true investigative determination on any child ten (10) years of age or older who is named as the offender in a true report and the services offered or provided by the department to the juvenile offender.

(3) Any local educational agency receiving information under this section from the department shall make this information, if it is a true report, confidential and a part of the child's permanent educational record and shall treat information under this section as educational records are treated under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(c)(1) Upon satisfaction of due process and if the investigative determination is true, if the offender is engaged in child-related activities or employment, works with the elderly, an individual with a disability, or an individual with a mental illness, or is a juvenile and the department has determined that children, the elderly, or individuals with a disability or mental illness under the care of the offender appear to be at risk of maltreatment by the offender, the department may notify the following of the investigative determination:

(A) The offender's employer;

(B) A school superintendent, principal, or a person in an equivalent position where the offender is employed;

(C) A person in charge of a paid or volunteer activity; and

(D) Any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(2) The department shall promulgate rules that shall ensure that notification required under this subsection is specifically approved by a responsible manager in the department before the notification is made.

(3) If the department later determines that there is not a preponderance of the evidence indicating that children under the care of the

alleged offender appear to be at risk, the department shall immediately notify the previously notified person or entity of that information.

(4)(A) Upon satisfaction of due process, the department may notify the entity or person in charge of the investigative determination if:

(i) The investigative determination is true; and

(ii) The alleged offender is a juvenile who is in a setting or circumstance where other children appear to be at risk.

(B) The department shall promulgate rules to ensure that notification required under this section is specifically approved by a responsible manager in the department before notification is made.

(C) If the department later determines that there is no preponderance of the evidence indicating that children appear to be at risk, the department shall immediately notify the previously notified entity or person of that information.

(d) Upon satisfaction of due process, if the victim or offender is in foster care, notification of the investigative determination shall be provided to:

(1) The legal parents, legal guardians, and current foster parents of the victim; and

(2) The attorney ad litem and court-appointed special advocate volunteer for the victim or offender.

(e) Upon satisfaction of due process, notification of the investigative determination shall be provided to the following:

(1) All subjects of the report; and

(2) As required by § 21-15-110, the employer of any offender if the offender is in a designated position with a state agency.

(f) Upon satisfaction of due process, the department shall confirm the investigative determination to the following, upon request:

(1) The responsible multidisciplinary team;

(2) The juvenile division of circuit court, if the victim or offender has an open dependency-neglect or family in need of services case;

(3) The attorney ad litem for a child who is named as the victim or offender;

(4) The court-appointed special advocate volunteer for a child named as the alleged victim or offender;

(5) Any licensing or registering authority if it is necessary to carry out its official responsibilities;

(6) Any department division director or facility director receiving notice of a Child Abuse Hotline report under this subchapter;

(7) The attorney ad litem and court-appointed special advocate volunteer of all other children in the same foster home if the child maltreatment occurred in a foster home;

(8) The attorney ad litem and court-appointed special advocate volunteer for any child in foster care when the alleged offender or underaged juvenile offender is placed in the same placement as the attorney ad litem or court-appointed special advocate volunteer's client;

(9) A child safety center if involved in the investigation;

(10) Law enforcement; and

(11) The prosecuting attorney in cases of severe maltreatment.

(g) Upon satisfaction of due process, the department may notify the persons or entities listed in subsection (f) of this section of the investigative determination if the department determines that the notification is necessary to accomplish the purposes of § 12-18-102.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 22; 2013, No. 1006, § 27.

Amendments. The 2011 amendment deleted former (b) and redesignated the remaining subsections accordingly; substituted "Department of Human Services" for "department" in (c)(1); substituted "for the victim or offender" for "any other children in the same foster home if the maltreatment occurred in the foster home" in (d)(2); deleted (e)(2) through (e)(11) and redesignated the remaining subdivision as (e)(2); and added (f) and (g).

The 2013 amendment rewrote (c)(1) and added (c)(4).

12-18-814. Automatic hearings for juveniles.

(a) The Division of Children and Family Services of the Department of Human Services shall provide written referrals to the Office of Appeals and Hearings of the Department of Human Services identifying each juvenile that is:

(1) The subject of a true child maltreatment finding; and

(2) Subject to placement on the Child Maltreatment Central Registry.

(b) The office shall schedule an administrative hearing for each juvenile identified under subsection (a) of this section.

(c) An administrative hearing scheduled under this section shall be conducted in accordance with the administrative hearing provisions of this subchapter except that the office shall not dismiss the case and place the petitioner's name on the Child Maltreatment Central Registry based solely on the petitioner's failure to provide a file-marked copy of the final disposition of the criminal or delinquency proceeding within thirty (30) days of the entry of the final disposition.

History. Acts 2013, No. 1006, § 28.

Subchapter 9 — Child Maltreatment Central Registry

Effective Dates. Acts 2013, No. 575, § 3: Apr. 2, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas public school students and their parents or guardians should be confident that any person who is allowed to volunteer at a school district or an education service cooperative does not have a criminal record and is not a potential threat to the safety of children; and that this act is immediately necessary to afford additional protection to school children from all persons in school districts or education service cooperatives who might sexually, physically, or emotionally abuse

students entrusted into their care. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-18-901. Creation.

RESEARCH REFERENCES

ALR. Constitutional Challenges to State Child Abuse Registries. 36 A.L.R.6th 475.

12-18-908. Removal of name from the Child Maltreatment Central Registry.

CASE NOTES

Child Custody.

In denying appellant father's motion to change child custody, the trial court did not err in failing to apply § 9-13-101(c)(1), (2)' s presumption that it was not in the best interest of a child to remain in the custody of an abusive parent because the record was completely devoid of any evidence of domestic violence. While appellee mother was placed on the child-maltreatment registry for a period of time pursuant to subdivision (b)(2) of this section for subjecting the child to a home that was filthy and infested with roaches, her poor housekeeping was not a form of domestic violence. Loftis v. Nazario, 2012 Ark. App. 98, — S.W.3d — (2012).

12-18-909. Availability of true reports of child maltreatment from the central registry.

(a) True reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars ($10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tables, video tapes, compact discs, DVDs, and photographs.

(2) A fee may not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The Department of Human Services shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court

has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the department.

(3) However, a local educational agency or a school counselor shall forward all true reports of child maltreatment received from the Department of Human Services when a child transfers from one (1) local educational agency to another and shall notify the department of the child's new school and address, if known.

(4) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(e)(1) The Department of Human Services may provide information, including protected health information, to a person or agency that provides services such as medical examination of, an assessment interview with, or diagnosis of, care for, treatment of, or supervision of a victim of maltreatment, a juvenile offender, or an underaged juvenile aggressor.

(2) This information may include:

(A) The investigative determination or the investigation report; and

(B) The services offered and provided.

(f) If an alleged offender's name has been provisionally placed in the Child Maltreatment Central Registry, any disclosure by the registry shall include the notation that the name has only been provisionally placed in the registry.

(g) A report made under this chapter that is determined to be true, as well as any other information obtained, including protected health information and the administrative hearing decision, and a report written or photograph or radiological procedure taken concerning a true report in the possession of the Department of Human Services shall be confidential and shall be made available only to:

(1) The administration of the adoption, foster care, children's and adult protective services programs, or child care licensing programs of any state;

(2) A federal, state, or local government entity, or any agent of the entity, having a need for the information in order to carry out its responsibilities under law to protect children from abuse or neglect;

(3) Any person who is the subject of a true report;

(4) A civil or administrative proceeding connected with the administration of the Arkansas Child Welfare State Plan when the court or hearing officer determines that the information is necessary for the determination of an issue before the court or agency;

(5) An audit or similar activity conducted in connection with the administration of such a plan or program by any governmental agency that may by law conduct the audit or activity;

(6)(A) A person, agency, or organization engaged in a bona fide research or evaluation project having value as determined by the Department of Human Services in future planning for programs for maltreated children or in developing policy directions.

(B) However, any confidential information provided for a research or evaluation project under this subdivision shall not be redisclosed.

(C) However, if a research or evaluation project results in the publication of related material, confidential information provided for a research or evaluation project under this subdivision shall not be disclosed;

(7) A properly constituted authority, including multidisciplinary teams referenced in this chapter, investigating a report of known or suspected child abuse or neglect or providing services to a child or family that is the subject of a report;

(8)(A) The Division of Child Care and Early Childhood Education of the Department of Human Services and the child care facility owner or operator who requested the registry information through a signed notarized release from an individual who is a volunteer, has applied for employment, is currently employed by a child care facility, or is the owner or operator of a child care facility.

(B) This disclosure shall be for the limited purpose of providing registry background information and shall indicate a true finding only;

(9) Child abuse citizen panels described in the Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a;

(10) Child fatality review panels as authorized by the Department of Human Services;

(11)(A) A grand jury upon a finding that information in the record is necessary for the determination of an issue before the grand jury.

(B)(i) A court in a criminal case upon finding that the information in the record is necessary for the determination of an issue before the court.

(ii) The court may disclose the report to parties under the terms of a protective order issued by the court;

(C)(i) A court in a child custody or similar civil case upon finding that the information in the record is necessary for the determination of a health or safety issue concerning a child before the court.

(ii) The court may disclose the report to the parties under the terms or a protective order issued by the court;

(12) The current foster parents of a child who is a subject of a report;

(13)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(14) A Court Appointed Special Advocate upon presentation of an order of appointment for a child who is a subject of a report;

(15) The attorney ad litem of a child who is the subject of a report;

(16)(A) An employer or volunteer agency for purposes of screening an employee, applicant, or volunteer who is or will be engaged in employment or activity with children, the elderly, individuals with disabilities, or individuals with mental illness upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The registry shall release only the following information on true reports to the employer or agency:

(i) That the employee, applicant, or volunteer has a true report;

(ii) The date the investigation was completed; and

(iii) The type of true report;

(17) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program;

(18) The Division of Child Care and Early Childhood Education of the Department of Human Services for purposes of enforcement of licensing laws and regulations;

(19) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(20) Any person or entity to whom notification was provided under this chapter; and

(21) The extent necessary to carry out a responsibility to ensure that children are protected while in the school environment or during off-campus school activities:

(A) A school district superintendent or other district-level administrator;

(B) A public school principal or other building-level administrator;

(C)(i) Another person or organization designated by a public school or school district to organize volunteers for the public school or school district upon the submission of a signed, notarized release from the volunteer.

(ii) The registry shall release only the following information on true reports to a person or an organization:

(a) That the employee, applicant, or volunteer has a true report;

(b) The date the investigation was completed; and

(c) The type of true report; and

(D) The Department of Education .

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 23; 2013, No. 575, § 2; 2013, No. 1006, §§ 29–31.

Amendments. The 2011 amendment, in (g)(11)(A), substituted "A grand Jury" for "A grand jury or court" and substituted "before the grand jury" for "before the court or grand jury"; rewrote (g)(11)(B); and added (g)(11)(C).

The 2013 amendment by No. 575 re-

wrote (g)(21).

The 2013 amendment by No. 1006 rewrote (b)(1)(A) and (b)(1)(B); inserted "and the administrative hearing decision" following "health information" in the introductory language of (g); and substituted "the terms of" for "the terms or" in (g)(11)(B)(ii).

12-18-910. Availability of screened-out and unsubstantiated reports.

(a) Screened-out and unsubstantiated reports of child maltreatment are confidential and may be disclosed only as provided in this chapter.

(b)(1) The Department of Human Services may charge:

(A) A reasonable fee not to exceed ten dollars ($10.00) for researching, copying, or mailing records from a child maltreatment investigative file; and

(B) A reasonable fee for reproducing copies of electronic media, such as audio tapes, video tapes, compact discs, DVDs, and photographs.

(2) A fee shall not be charged to:

(A) A nonprofit or volunteer agency that requests searches of the investigative files; or

(B) A person who is indigent.

(c)(1) The department shall not release data that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found it has reason to believe that the reporter knowingly made a false report.

(2) However, upon request, the information shall be disclosed to the prosecuting attorney or law enforcement.

(d)(1) Any person or agency to whom disclosure is made shall not disclose to any other person a report or other information obtained pursuant to this section.

(2) However, the person or agency is permitted to consult his or her or its own attorney regarding information provided by the department.

(3) Nothing in this chapter shall be construed to prevent subsequent disclosure by the subject of the report.

(e) Any record of a screened-out report of child maltreatment shall not be disclosed except to the prosecuting attorney and law enforcement and may be used only within the department for purposes of administration of the program.

(f) An unsubstantiated report, including protected health information and the administrative hearing decision, shall be confidential and shall be disclosed only to:

(1) The prosecuting attorney;

(2) A subject of the report;

(3)(A) A grand jury upon a finding that information in the record is necessary for the determination of an issue before a grand jury.

(B)(i) A court in a criminal case upon finding that the information in the record is necessary for the determination of an issue before the court.

(ii) The court may disclose the report to parties under the terms of a protective order issued by the court.

(C)(i) A court in a child custody or similar civil case upon finding that the information in the record is necessary for the determination of a health or safety issue concerning a child before the court.

(ii) The court may disclose the report to the parties under the terms or a protective order issued by the court;

(4)(A) Acting in their official capacities, individual United States and Arkansas senators and representatives and their authorized staff members but only if they agree not to permit any redisclosure of the information.

(B) However, disclosure shall not be made to any committee or legislative body of any information that identifies any recipient of services by name or address;

(5) Law enforcement;

(6) Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

(7) Adult protective services;

(8) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program;

(9) A Court Appointed Special Advocate upon presentation of an order of appointment for a child who is a subject of a report;

(10) The attorney ad litem of a child who is the subject of a report; and

(11) Any person or entity to whom notification was provided under this chapter.

(g) Hard copy records of unsubstantiated reports shall be retained no longer than eighteen (18) months for purposes of audit.

(h) Information on unsubstantiated reports included in the automated data system shall be retained indefinitely to assist the department in assessing future risk and safety.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 24; 2013, No. 1006, §§ 32–34.

Amendments. The 2011 amendment, in (f)(3)(A), substituted "A grand jury" for "A grand jury or court" and "before a grand jury" for "before the court or grand jury"; rewrote (f)(3)(B); and added (f)(3)(C).

The 2013 amendment rewrote (b)(1)(A) and (b)(1)(B); added "and the administrative hearing decision" in the introductory language of (f); and substituted "the terms of" for "the terms or" in (f)(3)(B)(ii).

Subchapter 10 — Protective Custody

SECTION.

12-18-1001. Protective custody generally.

(a) A police officer, law enforcement, a juvenile division of circuit court judge during juvenile proceedings concerning the child or a sibling of the child, or a designated employee of the Department of Human Services may take a child into custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his or her custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if:

(1) The child is subjected to neglect as defined under § 12-18-103(13)(B) and the department assesses the family and determines that the newborn and any other children, including siblings, under the custody or care of the mother are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother;

(2) The child is dependent as defined in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; or

(3) Circumstances or conditions of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian, or caretaker presents an immediate danger to the health or physical well-being of the child.

(b) However, custody shall not exceed seventy-two (72) hours except in the event that the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case custody may be extended through the next business day following the weekend or holiday.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 25.

Amendments. The 2011 amendment substituted "danger to the health or physical well-being of the child" for "danger of severe maltreatment" in (a)(3).

CASE NOTES

School Uniforms.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under subsection (a) of this section; there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

12-18-1002. Placement in a foster home.

A county sheriff or chief of police may place a child in his or her custody in a Department of Human Services foster home if:

(1) The county sheriff or chief of police contacts the on-call worker for the department and does not get a return phone call within thirty (30) minutes;

(2) The county sheriff or chief of police contacts the department Emergency Notification Line and does not get a return phone call within fifteen (15) minutes;

(3) The foster parent is personally well-known to the county sheriff or the chief of police;

(4) The county sheriff or chief of police has:

(A) Determined that the foster parent's home is safe and provides adequate accommodations for the child; and

(B) Performed a criminal record and child maltreatment check on the foster parent as required under § 9-28-409; and

(5) On the next business day, the county sheriff or chief of police immediately notifies the department of the time and date that the child was placed in the foster parent's home.

History. Acts 2009, No. 749, § 1; 2011, No. 779, § 20.

Amendments. The 2011 amendment inserted "in his or her custody" in the introductory language.

12-18-1010. When a child maltreatment investigation is determined to be true or true but exempted.

(a) If an investigation under this chapter is determined to be true or true but exempted under § 12-18-702(2)(C), the Department of Human Services may open a protective services case.

(b)(1) If the department opens a protective services case, it shall provide services to the family in an effort to prevent additional maltreatment to the child or the removal of the child from the home.

(2) The services shall be relevant to the needs of the family.

(c) If at any time during the protective services case the department determines that the child cannot safely remain at home, it shall take steps to remove the child under custody as outlined in this chapter or under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(d) Upon request, the department shall be provided at no cost a copy of the child's public and private school records if the department has an open protective services case.

(e) Upon request, the department shall be provided a copy of the results of radiology procedures, videotapes, photographs, or medical records on a child if the department has an open protective services case.

History. Acts 2009, No. 749, § 1; 2011, No. 1143, § 26.

Amendments. The 2011 amendment inserted "or true but exempted under § 12-18-702(2)(C)" in (a).

Subchapter 11 — Public Disclosure of Information on Fatalities and Near Fatalities

12-18-1101. Procedure if the investigation is pending on a fatality.

Upon request, the Department of Human Services shall release the following information to the general public when an investigation is pending on a report of a fatality of a child to the Child Abuse Hotline:

(1) Age, race, and gender of the child;

(2) Date of the child's death;

(3) Allegations or preliminary cause of death;

(4) County and type of placement of the child at the time of incident leading to the child's death;

(5) Generic relationship of the alleged offender to the child;

(6) Agency conducting the investigation;

(7) Legal action taken by the department;

(8) Services offered or provided by the department presently and in the past; and

(9) Name of the child.

History. Acts 2009, No. 675, § 1; 2013, No. 1181, § 4.

Amendments. The 2013 amendment inserted "type of" preceding "placement" in (4).

12-18-1102. Procedure if the investigation results in a true report related to a fatality.

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is true on a report of a fatality of a child:

(1)(A) A summary of previous child maltreatment investigations.

(B) The disclosure shall not include the name of the offender;

(2) A summary of the current child maltreatment investigation, including:

(A) The nature and extent of the child's present and past injuries;

(B) Medical information pertaining to the death; and

(C) The name of the offender if due process has been satisfied or the offender has been arrested;

(3) All relevant risk and safety assessments completed on the child;

(4) Information about criminal charges, if known; and

(5) Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

History. Acts 2009, No. 675, § 1; 2013, No. 1181, § 5.
Amendments. The 2013 amendment rewrote (1)(B); deleted former (1)(C); and inserted "relevant" preceding "risk" in (3).

12-18-1103. Procedure if the investigation results in an unsubstantiated report related to a fatality.

Upon request, the Department of Human Services shall release the following information to the general public when the investigative determination is unsubstantiated on a report of a fatality of a child:

(1)(A) A summary of previous child maltreatment investigations.

(B) The disclosure shall not include the name of the offender;

(2) A summary of the current child maltreatment investigation, including medical information pertaining to the death; however, the name of the alleged offender shall not be disclosed;

(3) All relevant risk and safety assessments completed on the child;

(4) Information about criminal charges, if known; and

(5) Any action taken by the Department of Human Services or the Crimes Against Children Division of the Department of Arkansas State Police, including personnel action and licensing action.

History. Acts 2009, No. 675, § 1; 2013, No. 1181, § 6.
Amendments. The 2013 amendment rewrote (1)(B); deleted former (1)(C); and inserted "relevant" preceding "risk" in (3).

12-18-1105. Procedure if the investigation is pending related to a near fatality.

Upon request, the Department of Human Services shall release the following information to the general public when an investigation is pending on a report of a near fatality of a child to the Child Abuse Hotline:

(1) Age, race, and gender of the child;

(2) Date of the near fatality;

(3) Allegations or preliminary cause of the near fatality;

(4) County and type of placement of the child at time of the near fatality;

(5) Generic relationship of the alleged offender to the child;

(6) Agency conducting the investigation;

(7) Legal action taken by the department; and

(8) Services offered or provided by the department presently and in the past.

History. Acts 2009, No. 675, § 1; 2013, No. 1181, § 7.
Amendments. The 2013 amendment inserted "type of" preceding "placement" in (4) and substituted "presently" for "now" in (8).

12-18-1108. Information not to be released in a child near fatality.

Concerning the near fatality of a child, the Department of Human Services shall not release:

(1) Information on siblings of the child;

(2) Attorney-client communications; or

(3) Any information if release of such information would jeopardize a criminal investigation.

History. Acts 2009, No. 675, § 1; 2011, No. 779, § 21.

Amendments. The 2011 amendment inserted "near" preceding "fatality" in the introductory language.

Subchapter 12 — Training Regarding Sexually Exploited Children

SECTION.

A.C.R.C. Notes. Acts 2013, No. 1257, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) The criminal justice system is not the appropriate place for sexually exploited children because it serves to retraumatize them and to increase their feelings of low self-esteem;

"(2) Both federal and international law recognize that sexually exploited children are the victims of crime and should be treated as such;

"(3) Sexually exploited children should, when possible, be diverted into services that address the needs of these children outside of the justice system; and

"(4) Sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services."

Acts 2013, No. 1257, § 2, provided: "Legislative intent.

"(1) The intent of this act is to protect a child from further victimization after the child is discovered to be a sexually exploited child by ensuring that a child protective response is in place in the state.

"(2) This is to be accomplished by presuming that any child engaged in prostitution or solicitation is a victim of sex trafficking and providing these children with the appropriate care and services when possible.

"(3) In determining the need for and capacity of services that may be provided, the Department of Human Services shall recognize that sexually exploited children have separate and distinct service needs according to gender, and every effort should be made to ensure that these children are not prosecuted or treated as juvenile delinquents, but instead are given the appropriate social services."

12-18-1201. Definition.

As used in this subchapter, "sexually exploited child" means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:

(1) Is a victim of trafficking of persons under § 5-18-103;

(2) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or

(3) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

History. Acts 2013, No. 1257, § 8.

12-18-1202. Training regarding sexually exploited children.

The Arkansas Juvenile Officers Association, Arkansas Law Enforcement Training Academy, or the Prosecutor Coordinator may provide training to intake officers, law enforcement, prosecutors, and any other appropriate staff concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.

History. Acts 2013, No. 1257, § 8.

CHAPTER 19

HUMAN TRAFFICKING — PREVENTION AND LAW ENFORCEMENT

12-19-101. State Task Force for the Prevention of Human Trafficking.

(a)(1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.

(2) The task force shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.

(b) If established, representatives on the task force shall be appointed by the Attorney General and may include representatives from:

(1) The office of the Attorney General;

(2) The office of the Governor;

(3) The Department of Labor;

(4) The Department of Health;

(5) The Department of Human Services;

(6) The Arkansas Association of Chiefs of Police;

(7) The Arkansas Sheriffs' Association;

(8) The Department of Arkansas State Police;

(9) The Arkansas Prosecuting Attorneys Association;

(10) Local law enforcement; and

(11) Nongovernmental organizations such as:

(A) Those specializing in the problems of human trafficking;

(B) Those representing diverse communities disproportionally affected by human trafficking;

(C) Agencies devoted to child services and runaway services; and

(D) Academic researchers dedicated to the subject of human trafficking.

(c) If the task force is created by the Attorney General, he or she may invite federal agencies that operate in the state to be members of the task force, including without limitation:

(1) The Federal Bureau of Investigation;

(2) United States Immigration and Customs Enforcement; and

(3) The United States Department of Labor.

(d) If the task force is created by the Attorney General, the task force shall:

(1) Develop a state plan;

(2) Coordinate the implementation of the state plan;

(3) Coordinate the collection and sharing of human trafficking data among government agencies in a manner that ensures that the privacy of victims of human trafficking is protected and that the data collection shall respect the privacy of victims of human trafficking;

(4) Coordinate the sharing of information between agencies to detect individuals and groups engaged in human trafficking;

(5) Explore the establishment of state policies for time limits for the issuance of law enforcement agency endorsements as described in 8 C.F.R. § 214.11(f)(1), as it existed on January 1, 2013;

(6) Establish policies to enable state government to work with nongovernmental organizations and other elements of the private sector to prevent human trafficking and provide assistance to victims of human trafficking who are United States citizens or foreign nationals;

(7) Evaluate various approaches used by state and local governments to increase public awareness of human trafficking, including trafficking of United States citizens and foreign national victims;

(8) Develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:

(A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5-18-101 et seq.;

(B) Methods used in identifying victims of human trafficking who are United States citizens or foreign nationals, including preliminary interview techniques and appropriate questioning methods;

(C) Methods for prosecuting human traffickers;

(D) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;

(E) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors;

(F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and

(G) Methods for promoting the safety of victims of human trafficking; and

(9) Submit a report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

History. Acts 2013, No. 132, § 6; 2013, No. 133, § 6.

A.C.R.C. Notes. Acts 2013, No. 133, § 1, provided: "Title. This act shall be cited as the 'Arkansas Human Trafficking Act of 2013'."

12-19-102. Posting information about the National Human Trafficking Resource Center Hotline.

(a) The following establishments shall post in a conspicuous place near the entrance of the establishment, or where posters and notices of this type customarily are posted, a poster described in subsection (b) of this section measuring at least eight and one-half inches by eleven inches (8½″ x 11″) in size:

(1) A hotel, motel, or other establishment that has been cited as a public nuisance for prostitution under § 20-27-401;

(2) A strip club or other sexually oriented business;

(3) A private club that has a liquor permit for on-premises consumption and does not hold itself out to be a food service establishment;

(4) An airport;

(5) A train station that serves passengers;

(6) A bus station; and

(7) A privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and overnight parking.

(b)(1) The poster shall read:

"If you or someone you know is being forced to engage in any activity and cannot leave — whether it is commercial sex, housework, farm work, or any other activity — call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. Victims of human trafficking are protected under United States and Arkansas state law.

The Hotline is:

- Available 24 hours a day, 7 days a week
- Toll-free
- Operated by a non-profit, non-governmental organization
- Anonymous and confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information".

(2) The poster shall be printed in English, Spanish, and any other language mandated by the Voting Rights Act of 1965, 42 U.S.C. § 1973, as it existed on January 1, 2013, in the county where the poster will be posted.

(c) The poster shall be available on the websites of all of the following:

(1) The Alcoholic Beverage Control Board where documents associated with obtaining a liquor license or alcoholic beverage license are customarily located;

(2) The Department of Labor; and

(3) The Arkansas State Highway and Transportation Department.

(d)(1) To obtain a copy of the poster required to be posted under this section, the owners or operators of an establishment required to post the notice under this section shall:

(A) Print the poster from any of the Internet websites in subsection (c) of this section; or

(B) Request that the poster be mailed for the cost of printing and first-class postage.

(2) The owner or operator shall post the sign in compliance with subsection (a) of this section.

(e)(1) If the regulatory agency that licenses or permits an establishment under this section finds that the establishment has failed to post the information required under this section, the owner or operator shall receive:

(A) For a first violation, a warning; and

(B) For a second or subsequent violation, a fine not to exceed five hundred dollars ($500).

(2) The violation of or noncompliance with this section, and each day's continuance thereof, shall constitute a separate and distinct violation.

(f) The civil fines in subsection (e) of this section do not apply to establishments that are owned or operated by the State of Arkansas.

History. Acts 2013, No. 1157, § 5.

12-19-103. Development of a state protocol for assistance.

The Department of Human Services shall develop a state protocol for assisting victims of human trafficking with applying for federal and state benefits and services to which they may be entitled.

History. Acts 2013, No. 1157, § 5.

CHAPTER 20

LAW ENFORCEMENT AGENCIES FOR PRIVATE COLLEGES AND UNIVERSITIES

SUBCHAPTER.

1. General Provisions.
2. Law Enforcement Officers.
3. Motor Vehicle Regulation.

Subchapter 1 — General Provisions

12-20-101. Definitions.

As used in this chapter:

(1) "Control" means that a private college or university is maintained on the property or rents or leases the property to facilitate events or functions of the private college or university;

(2) "Executive head" means the president or governing board of a private college or university;

(3) "Private college or university" means a college, university, or teaching hospital that has all of the following characteristics:

(A) Is not owned or controlled by the state or a political subdivision of the state;

(B) Provides a program of education in residence leading to a baccalaureate degree or provides a program of education in residence for which the baccalaureate degree is a prerequisite, leading to an academic or professional degree; and

(C) Is accredited by the North Central Association of Colleges and Schools or another nationally recognized agency that accredits private colleges and universities; and

(D) Has its principal place of business located in the state; and

(4) "Property" means both real property and personal property owned by or under the control of the private college or university and includes without limitation all highways, streets, alleys, and rights-of-way that are contiguous or adjacent to real property owned by or under the control of the private college or university.

History. Acts 2013, No. 227, § 3.

12-20-102. Applicability — Cumulative effect.

(a) This chapter applies to the property of each private college or university.

(b) This chapter does not mean that a private college or university is an agent of the State of Arkansas.

(c) This chapter is cumulative to any remedies that each private college or university may possess for enforcing its rules and regulations, including its rights to impose sanctions through fees and charges and its rights to discipline, deny service, and expel.

History. Acts 2013, No. 227, § 3.

12-20-103. Enforcement.

The prosecuting attorney or the city attorney, as may be appropriate, shall appear and prosecute in court all criminal offenses arising under this chapter.

History. Acts 2013, No. 227, § 3.

Subchapter 2 — Law Enforcement Officers

12-20-201. Appointment and removal of private college or university law enforcement officers.

(a) An executive head of a private college or university may appoint one (1) or more of the employees of the private college or university as a private college or university law enforcement officer for the private college or university, who shall exercise law enforcement officer authority under the laws of this state.

(b) A private college or university law enforcement officer shall:

(1) Have all the powers, duties, and obligations provided under the law for municipal police departments and county sheriffs, to be exercised as required for the protection of the private college or university, together with any other duties that may be assigned by the employing private college or university; and

(2) Meet the requirements for certification set out by the Arkansas Commission on Law Enforcement Standards and Training in addition to any private college or university requirements.

(c)(1) The jurisdictional powers or responsibilities of a county sheriff or municipal police department over the property of a private college or university or a person on the property of a private college or university are not ceded to a private college or university law enforcement officer.

(2) The appointment or designation of private college or university law enforcement officers does not supersede the authority of the Department of Arkansas State Police, a county sheriff, or a municipal police department of the jurisdiction within which the property of the private college or university, or portions of it, is located.

(d)(1) A private college or university law enforcement officer shall be identified by a shield or badge bearing the name of the private college or university.

(2) The private college or university shall issue an identification card bearing the photograph of the private college or university law enforce-

ment officer who shall carry it on his or her person at all times when on duty and display it upon request.

(e)(1) A private college or university law enforcement officer's authorization to have and to exercise the powers provided by law for law enforcement officers shall be further evidenced by a letter of appointment issued under the seal of the private college or university.

(2) The executive head of the private college or university shall maintain a file containing each private college or university law enforcement officer's letter of appointment and all other certificates and information consistent with the rules of the commission.

(3)(A) The executive head of the private college or university or the department may revoke in writing the appointment to serve as a private college or university law enforcement officer for the private college or university.

(B) Upon revocation as described in subdivision (e)(3)(A) of this section, the person shall not possess or exercise the authority of a private college or university law enforcement officer.

(C) A copy of all revocations shall be placed into the file described in subdivision (e)(2) of this section.

(D) A private college or university employing a private college or university law enforcement officer shall notify the commission of any change in the private college or university law enforcement officer's status within three (3) days.

(f) A private college or university law enforcement officer shall not be reimbursed with state funds for any training he or she receives or be eligible to participate in any state or municipal retirement system.

History. Acts 2013, No. 227, § 3.

12-20-202. Private college or university law enforcement officer's duties and powers.

(a) A private college or university law enforcement officer's primary jurisdiction is the private college or university employing him or her, and except to the extent otherwise limited by the executive head of the private college or university appointing him or her, the private college or university law enforcement officer shall:

(1) Protect property;

(2) Preserve and maintain proper order and decorum;

(3) Prevent unlawful assemblies, disorderly conduct, and trespass;

(4) Exclude and eject persons detrimental to the well-being of the private college or university; and

(5) Regulate the operation and parking of motor vehicles upon property of the private college or university.

(b)(1) A private college or university law enforcement officer shall exercise police supervision on behalf of the private college or university and may arrest any person in the private college or university law enforcement officer's primary jurisdiction who is committing an offense

against any law of the State of Arkansas or against the ordinances of the city or county in which the private college or university is located.

(2) A private college or university law enforcement officer may summon a posse comitatus if necessary to complete an arrest under subdivision (b)(1) of this section.

(c) A private college or university law enforcement officer may make an arrest for an offense against any law of the State of Arkansas outside his or her primary jurisdiction if the private college or university law enforcement officer is:

(1) Summoned by another law enforcement agency to provide assistance;

(2) Assisting another law enforcement agency;

(3) Exercising his or her police powers in accordance with a written mutual aid agreement or memorandum of understanding between the private college or university and the municipality or county within which the private college or university is located; or

(4)(A) Traveling to or from any location in the state on official business.

(B) As used in subdivision (c)(4)(A) of this section, "official business" includes without limitation:

(i) Engaging in intelligence-gathering activity relating to security on the property of the private college or university employing him or her;

(ii) Investigating a crime committed on the property of the private college or university employing him or her;

(iii) Transporting money, valuables, securities, or other valuables on behalf of the private college or university employing him or her;

(iv) Providing security or protective services for officials or visiting dignitaries to the private college or university employing him or her; or

(v) Continuously and immediately pursuing a person for an offense committed on the property of the private college or university employing him or her or in the private college or university law enforcement officer's eyesight.

(d)(1) When a private college or university law enforcement officer makes an arrest outside his or her primary jurisdiction, the private college or university law enforcement officer shall promptly notify the law enforcement agency with jurisdiction and forward a written report to the law enforcement agency with jurisdiction no later than the next working day.

(2) The law enforcement agency having jurisdiction may choose to conduct the investigation or allow the private college or university law enforcement officer to conduct the investigation.

History. Acts 2013, No. 227, § 3.

12-20-203. Records kept by a private college or university law enforcement agency.

Records generated or kept by a private college or university law enforcement agency under this chapter are subject to the same record keeping and disclosure requirements of a state or local law enforcement agency.

History. Acts 2013, No. 227, § 3.

Subchapter 3 — Motor Vehicle Regulation

12-20-301. Rules and regulations for motor vehicles on private college or university grounds.

(a)(1) Each private college or university may promulgate and amend rules and regulations for the operation and parking of motor vehicles on its property as its governing board deems necessary if the rules and regulations do not conflict with governing state law or a city or county ordinance.

(2) The rules and regulations described in subdivision (a)(1) of this section may be submitted to the city or county where the property of the private college or university is located for adoption as ordinances, including without limitation ordinances that:

(A) Limit the rate of speed; and

(B) Enforce other traffic rules, including control and direction of traffic.

(b) Speed limits shall be posted at reasonable intervals, and traffic and parking directions and prohibitions shall be indicated by signs.

History. Acts 2013, No. 227, § 3.

SUBTITLE 3. CORRECTIONAL FACILITIES AND PROGRAMS

CHAPTER 27

DEPARTMENT OF CORRECTION — DEPARTMENT OF COMMUNITY CORRECTION

on retirement or death.

A.C.R.C. Notes. Acts 2013, No. 1190, § 1, provided: "Legislative Intent. The purpose of this act is to create a holistic and seamless approach for reentry into society for persons in the custody of the Department of Correction."

Acts 2013, No. 1190, § 2, provided: "Meetings established.

"(a) The Department of Community Correction is directed to convene joint sessions with the Department of Correction, Arkansas Economic Development Commission, Department of Education, Department of Higher Education, Department of Career Education, Department of Workforce Services, Department of Human Services, Department of Finance and Administration, the Parole Board, the Arkansas Prosecuting Attorneys Association, the Arkansas Public Defender Commission, as well as criminal defense attorneys and any other state, county, or local agency as appropriate to discuss the goals of this act. All invited agencies shall participate.

"(b) The Department of Community Correction also shall involve the private sector by engaging groups such as chambers of commerce, labor unions, faith-based organizations, foundations with an interest in a reentry system, literacy groups, advocates for systemic reentry, and any other private sector groups as appropriate to discuss the goals of this act."

Acts 2013, No. 1190, § 3, provided: "Written findings required. On or before October 15, 2014, the Department of Community Correction shall make recommendations for the creation of a Restorative Justice Reentry System to the Interim House Committee on Judiciary and Senate Committee on Judiciary based upon the meetings and discussions with the agencies and other parties as outlined in this act."

12-27-101. Purposes and construction of the Department of Correction.

A.C.R.C. Notes. Acts 2013, No. 1207, § 35, provided: "USE OF MARKETING AND REDISTRIBUTION PROCEEDS FROM SALE OF STATE PROPERTY. The proceeds from the sale of state property through the Marketing and Redistribution Section of the Department of Finance and Administration, may be deposited into the Cash in State Treasury fund in an amount not to exceed $100,000 there to be used for operating expenses for the Paws in Prison program. The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.

12-27-103. Department of Correction — Creation — Powers and duties.

(a) There is established, under the supervision, control, and direction of the Board of Corrections, a Department of Correction.

(b) The Department of Correction shall have the following functions, powers, and duties, administered in accordance with the policies, rules, and regulations promulgated by the Board of Corrections:

(1) The Department of Correction shall have exclusive jurisdiction over the care, charge, custody, control, management, administration, and supervision of all persons and offenders committed to, or in the custody of, the state penitentiary;

(2) The Department of Correction shall assume management and control over all properties, both real and personal, facilities, books, records, equipment, supplies, materials, contracts, funds, moneys, equities, and all other properties belonging to the state penitentiary, except those deemed by the Board of Corrections to be more appropriate for placement in the Department of Community Correction. The Department of Correction shall administer said properties in accordance with the provisions of this act and other laws applicable to the administration of the state correctional system;

(3) The Department of Correction shall assume all obligations, contracts, indebtedness, liabilities, and other obligations of the state penitentiary system existing on March 1, 1968;

(4)(A) The Department of Correction shall have custody, management, and control over all institutions and facilities, and the inmates therein, now belonging to the state penitentiary or hereafter established by the Department of Correction for the custodial correction and rehabilitation of persons committed to the Department of Correcton for its care, except for those institutions established by or transferred to the Department of Community Correction.

(B) Legal custody of inmates transferred to the Department of Community Correction shall remain with the Department of Correction unless altered by court order;

(5) The Department of Correction shall establish and operate classification committees, diagnosis and treatment programs, and such other programs as may be desirable to fulfill the purposes of this act;

(6) The Department of Correction shall employ such officers, employees, and agents and shall secure such offices and quarters as are deemed necessary to discharge the functions of the Department of Correction;

(7) The Department of Correction shall receive all offenders committed to the Department of Correction for conviction of felonies or other offenses, the punishment of which is commitment to the penitentiary under the laws of this state, and shall be responsible for the care, custody, and correction of such persons pursuant to policies established by the Board of Corrections;

(8) The Department of Correction shall operate all farming, livestock, industries, and other income-producing facilities of the Department of Correction and shall sell the products of its industries and farms in the manner provided by law;

(9) The Department of Correction may establish and operate regional adult detention facilities, provided funds therefor have been authorized and appropriated by the General Assembly;

(10) The Department of Correction shall cooperate with municipalities and counties in this state in providing consulting services when requested with respect to detention and correctional facilities operated by the municipalities or counties;

(11) The Department of Correction shall cooperate with law enforcement agencies of this state, the United States, institutions of this state

for the detention, custody, and care of delinquent and dependent juveniles, and with all agencies and departments of this state offering services or programs of welfare, rehabilitation, and other services for the benefit of persons committed to the Department of Correction;

(12) The Department of Correction may accept gifts, grants, and funds from public and private sources with prior approval of the Board of Corrections and administer the same in furtherance of the purposes of this act;

(13)(A) The Department of Correction shall have the authority to issue warrants for the retaking of any person who, committed to its custody, unlawfully escapes therefrom.

(B) The warrant shall:

(i) Authorize all law enforcement officials of this state to take custody and return the person named therein to the custody of the Department of Correction; and

(ii) Authorize all law enforcement officials of this state, any other state, and the federal government to take custody and detain the person in any suitable detention facility while awaiting further transfer to the Department of Correction;

(14) The Department of Correction may cooperate with and contract with the federal government, governmental agencies of Arkansas and other states, political subdivisions of Arkansas, political subdivisions of other states, and private contractors to provide and improve correctional operations;

(15) The Department of Correction shall cooperate with the Department of Community Correction, the Parole Board, the Arkansas Sentencing Commission, judicial districts, municipalities, and counties in this state in providing guidance and services required to ensure a full range of correctional options for the state as a whole;

(16) The Department of Correction shall provide support to the Department of Community Correction as determined by the Board of Corrections;

(17) The Department of Correction shall assist the Board of Corrections in the furtherance of its goals by staffing the specific charges articulated for it through legislation and by the Board of Corrections; and

(18) The Department of Correction shall establish programs of research, evaluation, statistics, audit, and planning, including studies and evaluation of the performance of various functions and activities of the department and studies affecting the treatment of offenders and information about other programs.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 3; 1977, No. 935, § 1; A.S.A. 1947, § 46-103; Acts 1993, No. 549, § 2; 2011, No. 184, § 1.

A.C.R.C. Notes. Acts 2013, No. 1207, § 19, provided: "ADC SEX OFFENDER ASSESSMENT. The Arkansas Department of Correction is authorized to enter into a cooperative agreement with a qualified state treatment and assessment agency to conduct assessments of juvenile sex or child offenders as required by provisions of ACA 12-12-901 et. seq. and pay for services upon receipt of invoice.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Acts 2013, No. 1207, § 34, provided: "ESSENTIAL SERVICES STIPEND. The Arkansas Department of Correction (ADC) may award additional compensation to those exempt employees who are members of the emergency response unit. These employees are eligible to receive up to 3% per hour additional compensation for the actual number of hours that an employee spends on an emergency response action.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Amendments. The 2011 amendment inserted "political subdivisions of other states" in (b)(14).

12-27-105. Board's powers and duties.

(a) The purpose of the Board of Corrections is to manage correctional resources in the state such that offenders are held accountable for their actions, victims' needs are addressed in a positive manner, and the safety of society is enhanced.

(b) In furtherance of its purpose, the Board of Corrections shall have the following powers and duties:

(1)(A) General supervisory power and control over the Department of Correction and the Department of Community Correction and shall perform all functions with respect to the management and control of the adult correctional institutions and community correction options of this state contemplated by Arkansas Constitution, Amendment 33.

(B) No provision of this act shall abridge, diminish, or curtail in any respect the authority vested in the Board of Corrections as the successor to the State Penitentiary Board and the Arkansas Adult Probation Commission to govern and supervise the administration of the state penal institutions and community correction options;

(2) To coordinate resources for the corrections system, in conjunction with sentencing policy developed by the Arkansas Sentencing Commission, in a fashion that best serves the needs of the state, the entities encompassed, and the individuals served by and affected by corrections;

(3) To review and approve budgets submitted by the Department of Correction and the Department of Community Correction prior to submission for executive and legislative approval;

(4) To develop and approve policy and management decisions for the Department of Correction and the Department of Community Correction, evaluating their impact on corrections as a whole;

(5) To assist in the development of impact statements and recommendations on all existing and proposed legislation with regard to its effect on corrections as a whole, in cooperation and coordination with the commission;

(6) To coordinate the implementation and continued utilization of community correction options in support of sentencing policies developed by the commission;

(7) To investigate, monitor, and address the needs of the state for adequate housing, treatment, and employment of individuals involved in state-funded correctional programs, facilities, and states of supervision;

(8) To establish programs of research, statistics, and planning, including studies and evaluation of the performance of the various functions and activities of the board, in cooperation and coordination with the commission;

(9) Appoint temporary or permanent advisory committees for such purposes as it may determine;

(10)(A) Authorized and empowered to investigate, consider, and determine the needs of the state for adequately housing, treating, and employing prisoners of the state and to provide adequate facilities for such housing, treatment, and employment.

(B) The Board of Corrections is authorized and empowered to obtain and approve plans and specifications for the necessary buildings and plants to meet such needs and to provide for the construction and equipment of such buildings and plants;

(11) By and with the advice and approval of the Governor, at its discretion to close the operation of any penal institution if it deems such action necessary and more economical;

(12) To establish minimum standards for supervision, contact, programming, housing, and employee hiring within the parameters of those departments encompassed under its control;

(13) To establish a code of ethics for all employees, both institutional and community correction;

(14) To require and review annual audits of appropriate programs and facilities associated with the Board of Corrections;

(15) To prescribe the duties of all personnel of the Department of Correction and the Department of Community Correction and the regulations governing the transfer of employees within each department and between departments;

(16) Authorized to review, approve, make application for, and accept grants, gifts, and funds from any entity on behalf of any entity encompassed within the control of the Board of Corrections in carrying out and completing such projects as may be approved for the enumerated purposes and projects of this section;

(17)(A) Authorized to establish fees to be levied by the courts and paid by probationers during the probationary period.

(B) The Board of Corrections may also establish fees found necessary for participation in any community correction program or service.

(C) The payment of such sanctions and fees may be a condition of probation, parole, post prison transfer, or attached to admission and participation in a community correction program.

(D) The moneys collected shall be deposited in an earmarked account at the state level to be used solely for the continuation and expansion of community correction in this state.

(E) Economic sanction officers are to be authorized by the Department of Community Correction to perform these duties pursuant to policies and procedures adopted by the Board of Corrections and in accord with any state statutory accounting requirements; and

(18) To delegate duties to Board of Corrections staff and departmental staff as necessary and appropriate to fulfill its responsibilities to the state.

History. Acts 1933, No. 30, § 28; Pope's Dig., §§ 12695, 12775, 12776; Acts 1937, No. 140, §§ 2, 3; 1945, No. 13, §§ 2, 3; 1968 (1st Ex. Sess.), No. 50, § 2; 1975, No. 378, § 12; A.S.A. 1947, §§ 46-101, 46-108 — 46-110; Acts 1993, No. 549, § 4; 2013, No. 1277, § 2.

Amendments. The 2013 amendment, in (b)(11), substituted "to close" for "may close" and deleted "or prison farm" following "penal institution."

12-27-114. Inmates in county jails — Reimbursement of county — Medical care.

(a)(1)(A)(i) In the event the Department of Correction cannot accept inmates from county jails due to insufficient bed space, the Department of Correction shall reimburse the counties from the County Jail Reimbursement Fund at rates determined by the Chief Fiscal Officer of the State, after consultation with the Division of Legislative Audit and the Department of Correction and upon approval by the Governor, until the appropriation and funding provided for that purpose are exhausted.

(ii) The reimbursement rate shall include the county's cost of transporting the inmates to the Department of Correction.

(B)(i) Reimbursement shall begin on the date of sentencing if the judgment and commitment order is received by the Department of Correction not later than twenty-one (21) days from the sentencing date.

(ii) If the judgment and commitment order is received by the Department of Correction twenty-two (22) or more days after the sentencing date, reimbursement shall begin on the date the Department of Correction receives the judgment and commitment order.

(2)(A) In the event the Department of Community Correction cannot accept inmates from county jails due to insufficient bed space or shall have an inmate confined in a county jail under any prerelease program or sanction imposed in response to a violation of supervision conditions, the Department of Community Correction shall reimburse the counties from the fund at rates determined by the Chief Fiscal Officer of the State, after consultation with the division and the Department of Correction, and upon approval by the Governor, until the appropriation and funding provided for that purpose are exhausted.

(B)(i) Reimbursement shall begin on either the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction if the judgment and commitment order or the judgment and disposition order, whichever is applicable, is received by the Department of Community Correction not later than twenty-one (21) days from either the date of sentencing

or the date of placement on probation accompanied with incarceration in the Department of Community Correction.

(ii) If the judgment and commitment order or the judgment and disposition order, whichever is applicable, is received by the Department of Community Correction twenty-two (22) or more days after the date of sentencing or the date of placement on probation accompanied with incarceration in the Department of Community Correction, reimbursement shall begin on the date the Department of Community Correction receives either the judgment and commitment order or the judgment and disposition order, whichever is applicable.

(b)(1)(A) In the first week of each month, the Department of Correction and the Department of Community Correction shall prepare an invoice for each inmate received from a county during the previous month.

(B) The invoice shall reflect the number of days an inmate was in the county jail in an awaiting-bed-space status.

(2)(A) The Department of Correction and the Department of Community Correction shall verify and forward the invoices to the applicable county sheriff to certify the actual number of days the state inmates were physically housed in the county jail.

(B)(i) Upon written request of a county judge, county treasurer, or county sheriff, the Department of Correction and the Department of Community Correction shall provide to the county official making the request of a written report summarizing the year-to-date county jail reimbursement invoices prepared and forwarded for verification by the Department of Correction and the Department of Community Correction and payment from the fund.

(ii) In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed.

(3) The certified invoices shall then be returned to the Department of Correction and the Department of Community Correction for payment from the fund.

(4) The county sheriff shall maintain documentation for three (3) calendar years to confirm the number of days each inmate was housed in the county jail.

(5) The documentation maintained by the county sheriff is subject to review by the division.

(c)(1) The Board of Corrections shall adopt regulations by which the Department of Correction or the Department of Community Correction may reimburse any county, which is required to retain an inmate awaiting delivery to the custody of either the Department of Correction or the Department of Community Correction for more than thirty (30) days, for the actual costs paid for any emergency medical care for physical injury or illness of the inmate retained under this section if the injury or illness is directly related to the incarceration and the county is required by law to provide the care for inmates in the jail.

(2) The Director of the Department of Correction or his or her designee or the Director of the Department of Community Correction or his or her designee may accept custody of any inmate as soon as possible upon request of the county upon determining that the inmate is required to have extended medical care.

History. Acts 1985, No. 648, § 19; 1991, No. 329, §§ 2, 3; 1991, No. 574, §§ 2, 3; 1991, No. 644, § 3; 1995, No. 316, § 13; 2003, No. 370, § 1; 2003 (2nd Ex. Sess.), No. 16, § 1; 2005, No. 2192, § 1; 2013, No. 1282, § 1.

A.C.R.C. Notes. Acts 2013, No. 1207, § 15, provided: "COUNTY JAIL REIMBURSEMENT. In the event the Department of Correction cannot accept inmates from county jails due to insufficient bed space, the Department shall reimburse the counties at a rate determined by the Chief Fiscal Officer of the State, after consultation with the Division of Legislative Audit and the Department of Correction, and upon approval by the Governor, until the appropriation and funding for such purpose, is exhausted. The reimbursement rate shall include the county's cost of transporting the inmates to the department. The appropriation provided by Item (06) of Section 3 may be used for contracts with county jails for pre release inmates.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Acts 2013, No. 1207, § 30, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sheriff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

Acts 2013, No. 1380, § 19, provided: "COUNTY JAIL INVOICE SUMMARY. The Departments of Correction and Community Correction, shall at a minimum and on a fiscal year basis, prepare and post on the applicable agency web site, a monthly summary of county jail reimbursement invoices prepared and forwarded to each county sheriff for verification by the Departments and for payment from the County Jail Reimbursement Fund. In addition, the report shall include a summary of invoices returned by each county for payment for previous months within the fiscal year, the amounts paid, and any balances owed. Each fiscal year-end report shall be maintained on the web sites for a period of no less than three (3) years."

Amendments. The 2013 amendment inserted "or sanction imposed in response to a violation of supervision conditions" in (a)(2)(A).

12-27-116. Use of fuel and provisions — Issuance or sale of items produced.

(a) Except as authorized by the Board of Corrections, no officer of the Department of Correction or employee of the department shall give to anyone any fuel, forage, provisions, or manufactured articles under his or her charge, nor permit such things to be taken or used except for the use and benefit of the state.

(b)(1) The department may provide a program to provide for the orderly and equitable issuance or sale of surplus items produced or processed by the farming operations of the department to employees and, if the department provides the program, the department shall

implement a monitoring system to guarantee fiscal accountability in the program.

(2) Only those individuals identified as emergency force personnel meeting the following requirements may participate in the issuance of items under this program:

(A) Individuals whose duties require long working hours beyond the normal workday of approximately 8:00 a.m. to 5:00 p.m., and the normal workweek of five (5) days a week;

(B) Individuals required for long working hours, regularly worked weekends, and holidays; or

(C) Individuals on twenty-four-hour call, seven (7) days a week.

(3) As determined by availability after meeting the needs of the inmate population, reasonable quantities of items produced or processed by the farming operations of the department or purchased in bulk for processing shall be made available under this section.

(4) There shall be a twenty-five dollar ($25.00) per month minimum allowance for commissary items.

(5)(A) Fresh surplus vegetables will be available at the cost of production as determined by the Department of Correction's Farm Accounting Division and Central Office Accounting Division to all nonemergency force employees.

(B) Vegetables will be for the use of the employee and domicile correction's family only.

(C) Only one (1) member of the domicile family will be entitled to the issuance or purchase of vegetables.

(6) The department will implement, maintain, and guarantee accountability of all items so issued to assure fiscal responsibility and total honesty in the program.

History. Acts 1893, No. 76, § 54, p. 121; C. & M. Dig., § 9723; Pope's Dig., § 12754; Acts 1981, No. 139, § 1; A.S.A. 1947, § 46-129; Acts 1989 (1st Ex. Sess.), No. 118, § 33; 2009, No. 283, § 1; 2011, No. 182, § 1; 2011, No. 779, § 22.

Amendments. The 2011 amendment by No. 182, in (b)(1), substituted "shall adopt rules and regulations to establish" for "may provide" and substituted "if the department provides the program, the department" for "in addition."

The 2011 amendment by No. 779 added "shall be made available under this section" at the end of (b)(3).

12-27-127. Judicial transfer to the Department of Community Correction.

(a) All commitments shall specify that the inmate is to be judicially transferred to the Department of Community Correction or the commitment will be treated as a commitment to the Department of Correction and subject to regular transfer eligibility.

(b)(1) In accordance with rules, procedures, and regulations promulgated by the Board of Corrections and the orders of the committing court, the Director of the Department of Community Correction shall assign a newly transferred inmate to an appropriate facility, placement, program, or status within the Department of Community Correction.

(2) The director may transfer an inmate from one (1) facility, placement, program, or status to another consistent with the commitment, applicable law, and in accordance with treatment, training, and security needs.

(3)(A) An inmate may be administratively transferred back to the Department of Correction from the Department of Community Correction by the Parole Board following a hearing in which the inmate is found ineligible for placement in a Department of Community Correction facility as he or she fails to meet the criteria or standards established by law or policy adopted by the Board of Corrections or has been found guilty of a violation of the rules and regulations of the facility.

(B) Time served in a community correction facility or under supervision by the Department of Community Correction shall be credited against the sentence contained in the commitment to the Department of Correction.

(c)(1) In accordance with rules and procedures promulgated by the Board of Corrections, upon receipt of a referral from the director or his or her designee, the Parole Board may release from confinement an inmate who has been:

(A) Sentenced and judicially transferred to the Department of Community Correction;

(B) Incarcerated for a minimum of two hundred seventy (270) days; and

(C) Determined by the Department of Community Correction to have successfully completed its therapeutic program.

(2)(A) The General Assembly finds that the power granted to the Parole Board under subdivision (c)(1) of this section will:

(i) Aid the therapeutic rehabilitation of the inmates judicially transferred to the Department of Community Correction; and

(ii) More efficiently use the correctional resources of the State of Arkansas.

(B) The power granted to the Parole Board under subdivision (c)(1) of this section shall be the sole authority required for the accomplishment of the purposes set forth in this subdivision (c)(2), and when the Parole Board exercises its power under this section, it shall not be necessary for the Parole Board to comply with general provisions of other laws dealing with the minimum time constraints as applied to release eligibility.

(3) Nothing in this subsection (c) shall be construed as granting the Parole Board or the Department of Community Correction the authority either to detain an inmate beyond the sentence imposed upon him or her by a transferring court or to shorten that sentence.

History. Acts 1993, No. 549, § 8; 1995, No. 1170, § 5; 2005, No. 682, § 1; 2013, No. 1335, § 1.

Amendments. The 2013 amendment deleted "pursuant to § 16-93-1206(b)(3)" following "Department of Community Correction" in (a).

12-27-136. Services and equipment.

A.C.R.C. Notes. Acts 2013, No. 275, § 3, provided: "ASSISTANCE PROVISION. The Department of Correction and the Department of Community Correction may provide services, furnishings, equipment and office space to assist the Parole Board in fulfilling the purposes for which the Board was created by law.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

12-27-141. Department of Correction Annual Report.

A.C.R.C. Notes. Acts 2013, No. 1207, § 20, provided: "INMATE COST REPORTING — STATE FACILITIES.

"(a) Within 90 days of the close of each state fiscal year, the Arkansas Department of Correction (ADC) shall submit to the Arkansas Legislative Council a report of all direct and indirect costs incurred by the State of Arkansas in housing and caring for inmates incarcerated in the State's facilities. Such costs shall be calculated and reported in total for the Department and in total by each facility. The report shall also reflect overall cost per inmate per day, cost per inmate per day for each facility, overall cost per bed per day, and cost per bed per day for each facility.

"(b) In compiling costs and reporting to the Arkansas Legislative Council in accordance with subsection (a) of this section of this Act, the Department of Correction shall:

"(1) Record all expenditures in a manner that provides for the association of costs with each facility. Costs not directly attributable to a particular facility (overhead, administration, treatment, etc.) shall be allocated to each facility on the basis of inmate population.

"(2) Maintain documentation to support all elements of costs and cost reimbursement both in total and by facility;

"(3) Exclude capital outlay disbursements. However, depreciation expense for all ADC fixed assets shall be included. Depreciation expense not directly associated with the fixed assets of a particular facility shall be allocated to each facility on the basis of inmate population.

"(4) Include any interest expense incurred by ADC or another state governmental entity as a result of prison construction;

"(5) Exclude all payments to local governments for care of inmates housed in local government facilities;

"(6) Exclude all payments to local governments for Act 309 prisoners;

"(7) Include the state matching requirements associated with federal grant expenditures. Documentation shall be maintained sufficient to identify such costs by grant.

"(8) Deduct reimbursements for costs incurred. The amount of the reimbursement deducted shall be equal to or less than the cost with which the reimbursement is associated.

"(9) Include all ancillary costs. These costs shall include, but are not limited to:

"(A) ADC expenses incurred through fund transfers;

"(B) Retirement costs;

"(C) Audit costs;

"(D) ADC cost for shared employees paid by another state governmental entity;

"(E) Inmate educational and rehabilitation costs; expenses shall not include costs of defending Habeas Corpus cases.

"(F) Inmate related expenses incurred by the Attorney General; however; expenses shall not include costs of defending Habeas Corpus cases.

"(c) In determining costs per inmate per day for reporting to the Arkansas Legislative Council in accordance with subsection (a) of this section, ADC shall:

"(1) Accumulate the number of inmates housed at each ADC facility each day throughout the state fiscal year for which costs are being reported. This accumulation shall result in total inmate days and shall be divided into total direct and indirect costs compiled in accordance with subsections (a) and (b) of this section.

"(2) Exclude those ADC inmates housed in local governmental facilities and Act 309 prisoners from the number of inmates housed at ADC facilities.

"(3) Maintain documentation supporting the number of inmates housed at ADC facilities."

12-27-143. Award of service weapon upon retirement or death.

When a Department of Correction employee retires from service with at least twenty (20) years of service or dies while still employed with the department, in recognition of and appreciation for the service of the retiring or deceased employee, the department may award the service weapon carried by the employee at the time of his or her retirement from service or death to:

(1) The employee; or

(2) The employee's spouse if the spouse is eligible under applicable state and federal laws to possess a firearm.

History. Acts 2011, No. 181, § 1.

CHAPTER 28

STATE CORRECTIONAL FACILITIES

SUBCHAPTER.

1. General Provisions.

Subchapter 1 — General Provisions

SECTION.

12-28-107. Training for inmates.

12-28-107. Training for inmates.

(a) As provided for in § 12-28-101, the Department of Correction shall provide education as well as training for inmates who want to acquire skills for employment upon release.

(b)(1) The department shall identify high-demand vocations and careers and shall accordingly create training and skills programs to prepare inmates for gainful employment upon release.

(2) The programs under this section shall be available to all inmates except for inmates who disqualify themselves from participation due to disciplinary violations or because of other circumstances that may preclude the inmates' access to these programs.

(3) Programs under this section shall include without limitation training in the following fields:

(A) Professional careers and vocations;

(B) Service careers and vocations;

(C) Information and computer technology;

(D) Medical technology; and

(E) Office administration.

History. Acts 2011, No. 1151, § 3.

Subchapter 6 — Prison Overcrowding Emergency Powers Act

12-28-604. List of inmates — Early parole or discharge.

CASE NOTES

Cited: Loveless v. Agee, 2010 Ark. 53, — S.W.3d — (2010).

CHAPTER 29

INMATES OF STATE FACILITIES

SUBCHAPTER.

A.C.R.C. Notes. Acts 2011, No. 1151, § 4, provided: "Establishment of a study.

"(a) The Department of Finance and Administration or other appropriate state agency designated by the Governor shall explore the feasibility of the state's assuming responsibility for limiting liability for a business or other commercial or nonprofit enterprise that knowingly employs ex-offenders.

"(b) If the limiting of liability proves feasible and prudent, the Department of Finance and Administration or other appropriate agency designated by the Governor shall promulgate rules and regulations for implementation of a practice allowing the limitation of liability.

"(c) Authority to determine feasibility and prudence under this section rests solely with the Department of Finance and Administration or other appropriate state agency designated by the Governor."

Subchapter 1 — General Provisions

SECTION.

12-29-105. Clergy.

(a) All clergy of every denomination shall be admitted free to a Department of Correction prison or may visit any inmate confined therein, subject to such rules as may be necessary to the good government and discipline of the prison, and may administer the rites and ceremonies of the church to which the clergy belong if the inmate desires it.

(b) The Director of the Department of Correction shall afford every facility to a clergy to visit an inmate and to administer rites, ceremonies, and spiritual consolation to an inmate within the rules of the prison.

History. Acts 1893, No. 76, § 58, p. 121; C. & M. Dig., § 9686; Pope's Dig., § 12719; A.S.A. 1947, § 46-149; Acts 2011, No. 779, § 23; 2013, No. 295, § 1.

Amendments. The 2011 amendment deleted "and the physician" following "Department of Correction" in (b).

The 2013 amendment substituted "inmate" for "convict" throughout the section.

12-29-106. Mail to or from inmates.

(a)(1) A person without the consent of the Director of the Department of Correction shall not bring into or carry out of a prison any letter or writing to or from any inmate.

(2) Whoever shall violate the provisions of this section shall be guilty of a misdemeanor and shall on conviction be fined not exceeding one hundred dollars ($100) or imprisoned in the county jail not exceeding thirty (30) days, or both fined and imprisoned.

(b) However, all inmates shall have the privilege, under the proper supervision and inspection of the director or his or her employees, to write and receive letters from their relations and friends.

History. Acts 1893, No. 76, § 53, p. 121; C. & M. Dig., § 9714; Pope's Dig., § 12745; A.S.A. 1947, § 46-168; 2013, No. 295, § 2.

Amendments. The 2013 amendment substituted "inmate" for "convict" in (a); and "inmates" for "convicts" in (b).

12-29-111. Transport of inmate required for legal proceeding.

(a) If an inmate in the care and custody of the Department of Correction or the Department of Community Correction is required to be present during a criminal proceeding or a civil proceeding that arises from a criminal charge or conviction of any court in this state, the county sheriff of the county in which the criminal proceeding or civil proceeding takes place shall take custody of the inmate at the institution where the inmate is confined, transport the inmate to the appropriate county, and make him or her available to the court.

(b) At the conclusion of the criminal proceeding or civil proceeding, the county sheriff shall transport the inmate back to the unit of the Department of Correction or Department of Community Correction from which the inmate was received and shall return custody of the inmate to the Department of Correction or Department of Community Correction officials.

(c)(1) The county sheriff's office is responsible for the custody, sustenance, and safety of the inmate from the time the inmate is placed into its custody until the time custody of the inmate is returned to the Department of Correction or the Department of Community Correction.

(2) The county in which the legal proceeding is held is responsible for all expenses relating to the transportation and care of the inmate.

(d) While transporting an inmate under this section, a county sheriff has the full authority of his or her office in any county of this state in matters relating to the transportation.

(e) This section does not apply to the transportation and care costs for court appearances arising from charges brought by the Department of Correction against the inmate for offenses committed while the inmate is under the custody and care of the Department of Correction.

(f)(1) When an inmate in the care and custody of the Department of Correction or the Department of Community Correction is required to be present for appearances in a civil proceeding that does not arise from a criminal charge or conviction, the court requiring the inmate's presence may assess costs against one (1) or more of the parties to the proceeding to be paid to the Department of Correction or the Department of Community Correction to compensate the actual cost of transporting the inmate and to compensate other costs assessed by the court.

(2) Costs under this subsection shall not be assessed against the Department of Human Services if the Department of Human Services is a party to the proceeding.

History. Acts 1975, No. 737, § 1; A.S.A. 1947, § 46-181; Acts 2009, No. 364, § 1; 2013, No. 287, § 1.

Amendments. The 2013 amendment rewrote the section.

12-29-112. Discharge or release.

(a) Inmates released upon completion of their term or released on parole shall be supplied with satisfactory clothing and a travel subsidy as prescribed by the Board of Corrections.

(b) Upon release of any inmate from any unit or center of the Department of Correction, the department shall provide transportation for the inmate to the closest commercial transportation pick-up point.

(c) An inmate released upon completion of his or her terms of incarceration shall be provided:

(1) Written and certified proof that he or she completed and satisfied all the terms of his or her incarceration; and

(2) Information on how to reinstate his or her voting rights upon discharge of his or her sentence.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 15; 1969, No. 377, § 7; 1981, No. 58, § 3; 1981, No. 107, § 1; A.S.A. 1947, §§ 46-121, 46-914; Acts 2007, No. 271, § 1; 2009, No. 788, § 4; 2013, No. 440, § 1.

Amendments. The 2013 amendment deleted former (c) and redesignated former (d) as (c).

12-29-115. Combination to escape — Authority of guards.

(a) The officers and guards of the Department of Correction shall use all lawful and suitable means to defend themselves, secure the persons of offenders, and prevent attempted violence and escape whenever two

(2) or more inmates shall combine for the following purposes or whenever one (1) or more inmates shall:

(1) Offer violence to any officer, guard, or inmate;

(2) Do or attempt to do any injury to any building, workshop, or appurtenance thereto;

(3) Attempt to escape; or

(4) Resist any lawful demand.

(b) If any of the officers or guards employed in the department shall, in the attempt to prevent the escape of any inmate, any attempt to retake any inmate who may have escaped, or in the attempt to suppress any riot, revolt, or insurrection, take the life of any inmate, the officer or guard shall not be held responsible therefor unless it is done unnecessarily or wantonly.

History. Acts 1893, No. 76, § 49, p. 121; C. & M. Dig., § 9691; Pope's Dig., § 12723; A.S.A. 1947, § 46-163; 2013, No. 295, § 3.

Amendments. The 2013 amendment substituted "inmates" for "convicts" and "inmate" for "convict" throughout the section.

12-29-116. Authority of director in case of alarm or danger.

The Director of the Department of Correction shall have the authority of a county sheriff over the power of the county in which a Department of Correction's prison or inmate camp is situated in all cases of alarm or danger at the prison or camp, in the absence of the county sheriff or the county sheriff's inability to act.

History. Acts 1893, No. 76, § 56, p. 121; C. & M. Dig., § 9724; Pope's Dig., § 12755; A.S.A. 1947, § 46-164; 2013, No. 295, § 4.

Amendments. The 2013 amendment substituted "inmate" for "convict."

Subchapter 2 — Good Time Allowance

SECTION.

12-29-201. Meritorious good time.

(a) An inmate may be entitled to meritorious good time reducing his or her transfer eligibility date up to thirty (30) days for each month incarcerated after imposition of sentence in one (1) of the units, facilities, and centers maintained by the Department of Correction or the Department of Community Correction.

(b) An inmate transferred or paroled to the supervision of the Department of Community Correction under § 16-93-615 may receive meritorious good time reducing his or her time of transfer or parole supervision up to thirty (30) days for each month he or she is under the supervision of the Department of Community Correction.

(c) Meritorious good time shall be allocated under rules and regulations promulgated by the Board of Corrections and administered by the respective Department of Correction or Department of Community Correction staff subject to the provisions of this subchapter for good discipline, behavior, work practices, job responsibilities, and involvement in rehabilitative activities while in the custody or under the supervision of the Department of Correction or the Department of Community Correction.

(d) Meritorious good time will not be applied to reduce the length of a sentence.

(e)(1) Meritorious good time shall apply to an inmate's transfer eligibility date from the Department of Correction or a community correction facility.

(2) Meritorious good time shall under no circumstances reduce an inmate's time served in prison by more than one-half (½) of the percentage required by law for transfer eligibility.

(3) Meritorious good time shall under no circumstances reduce an inmate's confinement in a community correction facility by more than one-half (½).

(f)(1) The Department of Correction or the Department of Community Correction shall determine a date on which the inmate who has acquired the maximum amount of meritorious good time necessary is to be administratively transferred to a less restrictive placement or supervision level within the Department of Community Correction.

(2) This date will be determined in accordance with the policies developed by the Arkansas Sentencing Commission within the parameters allowed by law.

(g)(1) Inmates under sentence of death or life imprisonment without parole shall not be eligible for meritorious good time under this subchapter but may be pardoned or have their sentences commuted by the Governor, as provided by law.

(2) Inmates sentenced to life imprisonment shall not receive meritorious good time calculated on their sentences unless the sentence is commuted to a term of years by executive clemency.

(3) Upon commutation, the inmate shall be eligible to receive meritorious good time at the rate established by this subchapter.

History. Acts 1993, No. 536, §§ 1, 2; 1993, No. 558, §§ 1, 2; 2003, No. 1005, § 1; 2011, No. 570, § 73.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment substituted "§ 16-93-615" for "§ 16-93-206" in (b).

CASE NOTES

Analysis

Applicability.
Prisoners' Rights Claim.

Applicability.

Because this section, changing how meritorious good-time credit was applied, did not impliedly repeal the language in § 16-90-121 (the deadly-weapon enhancement statute applicable at the time of an inmate's sentence), the inmate's 30-year sentence for first-degree murder was subject to reduction by meritorious good-time credit at the conclusion of the first 10 years of the sentence. Hobbs v. Baird, 2011 Ark. 261, — S.W.3d — (2011).

Prisoners' Rights Claim.

Inmate's Class 1-C classification for purposes of calculating meritorious good time under this section did not in and of itself give rise to a constitutional claim where the inmate was unable to show an atypical and substantive deprivation that was a dramatic departure from the basic conditions of his confinement. Crawford v. Cashion, 2010 Ark. 124, 361 S.W.3d 268 (2010).

12-29-202. Classification committee — Classifications.

(a)(1) There is established a classification committee to be defined by administrative regulations approved by the Board of Corrections.

(2) Members of the committee shall be selected by wardens or supervisors of the various units, facilities, or centers of the Department of Correction and Department of Community Correction per board regulation governing their selection.

(3) This committee shall meet as often as necessary to classify the inmates into no more than four (4) classes according to good behavior, good discipline, medical condition, job responsibilities, and involvement in rehabilitative activities.

(b)(1) An inmate who maintains class through good behavior, good discipline, work practices, job responsibilities, and involvement in rehabilitative activities may earn up to one (1) day for every day served as a reduction toward his or her transfer eligibility date for each day incarcerated after the imposition of sentence.

(2) An inmate who is reduced to the lowest class, established through board policy, as a result of disciplinary action shall not be entitled to earn meritorious good time.

(3) An inmate serving a punitive disciplinary sentence in punitive segregation shall not be entitled to earn meritorious good time.

(c) An inmate may be reclassified as often as the committee deems necessary or in accordance with current board regulations to carry out the purpose of this subchapter and to maintain good discipline, order, and efficiency at the units, facilities, or centers.

(d)(1) Upon recommendation of the committee, the Director of the Department of Correction may award an amount of meritorious good time sufficient to reduce incarceration time by up to ninety (90) days, not to exceed a total of three hundred sixty (360) days, for each successful completion of a:

(A) State-sponsored general education development certificate program;

(B) Vocational program for which certification is awarded;

(C) Drug or alcohol treatment program offered at a Department of Correction facility; or

(D) Pre-release and other rehabilitative programs or assignments as approved by the Board of Corrections.

(2)(A) The additional days of meritorious good time described in subdivision (d)(1) of this section shall be awarded pursuant to rules promulgated by the board.

(B) The board may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Meritorious good time awarded under subdivision (d)(1) of this section shall not be applicable to persons sentenced under § 16-93-618(a)(1)(A)-(E).

(f) A jury may be instructed pursuant to § 16-97-103 regarding the awarding of meritorious good time under subdivision (d)(1) of this section.

History. Acts 1993, No. 536, § 3; 1993, No. 558, § 3; 1997, No. 876, § 1; 2005, No. 681, § 1; 2007, No. 1413, § 1; 2011, No. 570, § 74; 2011, No. 748, § 1.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment by No. 570, in (e), deleted "In no event shall the awarding of" at the beginning, inserted "awarded" and "shall not," and substituted "16-93-618(a)(1)(A)—(E)" for "§ 16-93-611(a)(1)(A)-(E)."

The 2011 amendment by No. 748 substituted "three hundred sixty (360) days" for "two hundred seventy (270) days" in (d)(1); and added (d)(1)(D).

Subchapter 4 — Medical Care

12-29-401. Medical care.

(a) The Department of Correction shall establish and shall prescribe standards for health, medical, mental health, and dental services for each institution, including preventive, diagnostic, and therapeutic measures on both an outpatient and inpatient basis for all types of patients.

(b) An inmate may be taken, when necessary, to a medical facility outside the institution, but the Director of the Department of Correction shall provide ample safeguards for the custody of the inmate while confined in a medical facility outside the institution.

(c)(1) The Board of Corrections is authorized to establish and maintain facilities for health, medical, mental health, and dental services for each institution in the Department of Correction and the Department of Community Correction, including preventive, diagnostic, and therapeu-

tic measures on both an outpatient and inpatient basis for all types of patients, and to hire physicians and other health care professionals.

(2) The board may also implement copay charges for inmate-initiated health care requests.

(d)(1) The Department of Correction and the Department of Community Correction shall have access to and may obtain copies of all medical records pertaining to any person incarcerated in a facility of either of those departments, including, but not limited to, test results, treatment records, and examination reports generated prior to the commitment of the person to the Department of Correction or the Department of Community Correction or based on medical care received by the person outside the Department of Correction or the Department of Community Correction during the period of the person's incarceration, regardless of whether the person consents to the release of the information.

(2)(A) Any entity or person in possession of such records or information has a duty to disclose it to the Department of Correction or the Department of Community Correction upon written request by the Director of the Department of Correction or his or her designee or the Director of the Department of Community Correction or his or her designee, provided that the Department of Correction and the Department of Community Correction shall put in place the privacy and security provisions required by federal law and provide assurances of compliance, in writing, to the entity or person to whom the written request is made.

(B) Additionally, the requesting entity or person shall provide assurances in the written request that provisions of state laws which require heightened security and privacy will be complied with.

(3) Any information obtained pursuant to this section shall be used only for treatment purposes, to enable the Department of Correction and the Department of Community Correction to assign the incarcerated person to the correct unit or to enable the Department of Correction or the Department of Community Correction to file insurance claims, if applicable.

(4) Any hospital, clinic, medical office, or other such entity and the owners, officers, directors, employees, or agents of such entity, or any other person who, in good faith, furnishes any records or information to the Department of Correction or the Department of Community Correction pursuant to this subsection shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed in the absence of this subsection.

(e)(1) If an inmate in the Department of Correction or a person in the custody of the Department of Community Correction receives medical services that meet criteria for Medicaid coverage, the departments are authorized to apply for Medicaid coverage under this subsection.

(2)(A) The inmate or person may designate a representative for the purposes of filing a Medicaid application and complying with Medicaid requirements for determining and maintaining eligibility.

(B) However, the agency having custody of the inmate or person shall be the authorized representative for purposes of establishing and maintaining Medicaid eligibility under this subsection if:

(i) The inmate or person does not designate a representative within three (3) business days after request; or

(ii) The representative designated under subdivision (e)(2)(A) of this section does not file a Medicaid application within three (3) business days after appointment and request.

(3) An authorized representative under this subsection:

(A) Shall have access to the information necessary to comply with Medicaid requirements; and

(B) May provide and receive information in connection with establishing and maintaining Medicaid eligibility, including confidential information.

(4)(A) The Director of the Department of Correction or the Director of the Department of Community Correction or his or her designee may access information necessary to determine if a Medicaid application has been filed on behalf of the inmate or person.

(B) Disclosure under subdivision (e)(4)(A) of this section shall be to:

(i) Establish Medicaid eligibility;

(ii) Provide health care services; or

(iii) Pay for health care services.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 11; A.S.A. 1947, § 46-150; Acts 1993, No. 884, § 1; 1995, No. 291, § 1; 2001, No. 161, § 1; 2013, No. 462, § 1; 2013, No. 467, § 1.

Amendments. The 2013 amendment by No. 462 added (c)(2).

The 2013 amendment by No. 467 added (e).

12-29-402. Physical examination — Assignment to labor.

RESEARCH REFERENCES

ALR. Constitutional Right of Prisoners to Abortion Services and Facilities. 28 A.L.R.6th 485.

12-29-403. Inmates with a disability — Duty of physician.

(a)(1) Each new inmate committed to the Department of Correction shall be given a medical examination during the intake process.

(2)(A) During the medical examination required under subdivision (a)(1) of this section, the medical provider shall determine what restrictions if any shall be placed upon the inmate's work assignments.

(B) Restrictions placed upon an inmate's work assignments under subdivision (a)(2)(A) of this section shall be updated as medically necessary.

(b) The department shall not assign an inmate to a work assignment that conflicts with a restriction determined by the medical provider for the department under subdivision (a)(2) of this section.

(c) Whenever the medical provider updates the restrictions under subdivision (a)(2) of this section, the department shall adjust the inmate's work assignments as necessary to comply with the updated restrictions.

History. Acts 1893, No. 76, § 34, p. 121; C. & M. Dig., § 9665; Pope's Dig., § 12705; A.S.A. 1947, § 46-151; Acts 2009, No. 208, § 1; 2013, No. 295, § 5.

Amendments. The 2013 amendment substituted "inmate" for "convict" in the section heading.

12-29-404. Medical parole for a terminal illness or permanent incapacitation.

(a) As used in this section:

(1) "Permanently incapacitated" means, as determined by a licensed physician, that an inmate:

(A) Has a medical condition that is not necessarily terminal but renders him or her permanently and irreversibly incapacitated; and

(B) Requires immediate and long-term care; and

(2) "Terminally ill" means, as determined by a licensed physician, that an inmate:

(A) Has an incurable condition caused by illness or disease; and

(B) Will likely die within two (2) years due to the illness or disease.

(b) The Director of the Department of Correction or the Director of the Department of Community Correction shall communicate to the Parole Board when, in the independent opinions of either a Department of Correction physician or Department of Community Correction physician and a consultant physician in Arkansas, an inmate is either terminally ill or permanently incapacitated and should be considered for transfer to parole supervision.

(c)(1) Upon receipt of a communication described in subsection (b) of this section, the board shall assemble or request all such information as is germane to determine whether the inmate is eligible under this section for immediate transfer to parole supervision.

(2) If the facts warrant and the board is satisfied that the inmate's physical condition makes the inmate no longer a threat to public safety, the board may approve the inmate for immediate transfer to parole supervision.

(d) An inmate is not eligible for parole supervision under this section if he or she is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and:

(1) The inmate is assessed as a Level 3 offender or higher; or

(2) A victim of one (1) or more of the inmate's sex offenses was fourteen (14) years of age or younger.

(e) The board may revoke a person's parole supervision granted under this section if the person's medical condition improves to the

point that he or she would initially not have been eligible for parole supervision under this section.

History. Acts 1893, No. 76, § 35, p. 121; C. & M. Dig., § 9666; Pope's Dig., § 12706; A.S.A. 1947 § 46-152; Acts 1991, No. 771, § 1; 1995, No. 290, § 1; 2011, No. 570, § 75.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment rewrote (a); added (b) and redesignated former (b) as (c); in (c)(1), added "Upon receipt of a communication described in subsection (b) of this section, the" at the beginning, and substituted "determine whether the inmate is eligible under this section for immediate transfer to parole supervision" for "making a decision"; in (c)(2), inserted "and the board is satisfied that the inmate's physical condition makes the inmate no longer a threat to public safety," substituted "approve" for "make," and deleted "eligible" following "inmate"; and added (d) and (e).

Subchapter 5 — State Prison Inmate Care and Custody Reimbursement Act

12-29-501. Title.

CASE NOTES

Analysis

Constitutionality.
Illustrative Cases.

Constitutionality.

Supreme Court of Arkansas held that the application of the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507, to appellant and other inmates based solely on the balance in their inmate accounts did not violate the equal protection guarantee because the Act was rationally related to the legitimate government purpose of allowing the State to seek reimbursement for care and custody expenses from inmates whose account balances were greater than the cost of litigating the reimbursement under the Act. MacKool v. State, 2012 Ark. 287, — S.W.3d — (2012).

Illustrative Cases.

State was entitled to the $5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507, for a portion of the cost of housing appellant, because money appellant received as a gift from his mother that was deposited into the account was clearly within the Act's definition of the term "estate." MacKool v. State, 2012 Ark. 287, — S.W.3d — (2012).

12-29-502. Definitions.

As used in this subchapter:

(1) "Board" means the Board of Corrections;

(2) "Cost of care" means the cost to the Department of Correction or the Department of Community Correction for providing room, board, clothing, medical, and other normal living expenses of inmates in the Department of Correction or the Department of Community Correction, as determined from time to time by the board;

(3) "Director" means the Director of the Department of Correction or the Director of the Department of Community Correction; and

(4) "Estate" means any tangible or intangible properties, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction or the Department of Community Correction, including income or payments to the inmate from social security, previously earned salary or wages, bonuses, annuities, pensions, or retirement benefits, or any source whatsoever.

History. Acts 1981, No. 715, § 2; A.S.A. 1947, § 46-1702; 2013, No. 289, § 1.

Amendments. The 2013 amendment inserted "or the Department of Community Correction" following "Department of Correction" in (2) and (4); and substituted "Department of Correction or the Department of Community" for "department" in (2) and (4).

CASE NOTES

Recovery from Estate.

State was entitled to the $5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507, for a portion of the cost of housing appellant. The Supreme Court of Arkansas held that any money appellant received as a gift from his mother that was deposited into his inmate account was clearly within the definition of the term "estate" in subdivision (4) of this section. MacKool v. State, 2012 Ark. 287, — S.W.3d — (2012).

12-29-503. Monthly reports on prisoners — Investigation.

(a)(1) The Director of the Department of Correction or the Director of the Department of Community Correction shall forward to the Attorney General a list containing the name of each prisoner in the respective penal facilities of the Department of Correction or the Department of Community Correction, the county from which he or she was sentenced, the term of the sentence, the date of admission, together with all information available to the appropriate department on the financial responsibilities of the prisoner.

(2) The report shall be made on forms to be agreed upon by the director and the Attorney General or his or her designated employee and shall be made on or before the tenth day of each month.

(b) The Attorney General shall investigate or cause to be investigated all such reports furnished by the Department of Correction or the Department of Community Correction for the purpose of securing reimbursement for the expenses of the State of Arkansas for the cost of care of the prisoners.

History. Acts 1981, No. 715, § 3; A.S.A. 1947, § 46-1703; 2013, No. 289, § 2.

Amendments. The 2013 amendment, in (a)(1), inserted "or the Department of

Community Correction," "or the Department of Community Correction," and "appropriate"; and substituted "Department of Correction or the Department of Community Correction" for "department" in (b).

12-29-504. Reimbursement proceedings — Appointment of guardian.

(a)(1) When a person is admitted to an institution of the Department of Correction as a prisoner or the Department of Community Correction as a resident of a community correction facility, the Attorney General shall petition the circuit court of Pulaski County or the prosecuting attorney of the county from which the person was sentenced shall petition the circuit court of the county from which the person was sentenced if the person or prisoner possesses any estate or becomes possessed of any estate while he or she remains in the institution.

(2) The petition shall:

(A) State that the person is a prisoner in a penal facility of the Department of Correction or a resident of a facility operated by the Department of Community Correction;

(B) State that the Attorney General or prosecuting attorney has good reason to believe and does believe that the prisoner has an estate;

(C) Pray for the appointment of a guardian of the person if a guardian has not already been appointed; and

(D) Pray that the estate may be subjected to payment to the state of the expenses paid and to be paid by the state on behalf of the person as a prisoner.

(b)(1) The court shall then issue a citation to show cause why the prayer of the petitioner should not be granted.

(2) If the prisoner of the Department of Correction or resident of a facility operated by the Department of Community Correction has a guardian, the petition shall be served upon the guardian.

(3) If the prisoner of the Department of Correction or resident of a facility operated by the Department of Community Correction has no guardian, the petition shall be served upon the prisoner or resident of a facility operated by the Department of Community Correction by delivering a copy personally or by registered mail to the warden or head of the penal institution where the prisoner is being detained or, if the person is a resident of a facility operated by the Department of Community Correction, to the Director of the Department of Community Correction, at least fourteen (14) days before the date of the hearing.

(4) The court may appoint a guardian of the person or prisoner.

(c)(1)(A) At the time of the hearing, if it appears that the person or prisoner has an estate that ought to be subject to the claim of the state, the court, without further notice, shall appoint a guardian of the person and estate of the prisoner if the court deems one necessary for the protection of the rights of all parties concerned.

(B)(i) The court shall make an order requiring the guardian or any person or corporation possessing the estate belonging to the prisoner

of the Department of Correction or a resident of a facility operated by the Department of Community Correction to appropriate and apply the estate or part of the estate as appropriate toward reimbursing the state, to the payment of the expenses so far incurred by the state on behalf of the prisoner and a part of the estate toward reimbursing the state for the future expenses that it must pay on the prisoner's behalf.

(ii) This reimbursement shall not be in excess of the per capita cost of maintaining prisoners in the institution in which he or she is an inmate.

(2)(A) However, before issuing any order under this subchapter providing for payments from the estate of the prisoner for his or her cost of care while confined to an institution of the Department of Correction or the Department of Community Correction, the court shall take into consideration and make allowances for the maintenance and support of the spouse, dependent children, or other persons having a moral or legal right to support and maintenance out of the estate of the prisoner.

(B) The court shall take those factors into consideration in determining the amount to be paid, if any, from the estate of the prisoner for his or her cost of care at the Department of Correction or the Department of Community Correction.

(d)(1) If a guardian, person, or corporation neglects or refuses to comply with the order, the court shall cite him or her to appear before the court at a time as it may direct and to show cause why he or she should not be sentenced for contempt of court.

(2) As an additional remedy, the Attorney General or prosecuting attorney may enforce payment of the sums provided in the original order by a proper action in the name of the state.

(3) If, in the opinion of the court, the estate of the prisoner is sufficient to pay the cost of the proceedings, the estate shall be made liable for the cost of the proceedings by order of the court.

(e)(1) The proceedings provided for by this section may be begun at any time after admittance to a penal facility of the Department of Correction or the Department of Community Correction.

(2) Recovery may be had for the expenses incurred on behalf of a person or prisoner during the entire period the person has been confined as a prisoner in a penal facility of the Department of Correction or the Department of Community Correction.

History. Acts 1981, No. 715, § 4; A.S.A. 1947, § 46-1704; 2013, No. 289, § 3.

Amendments. The 2013 amendment rewrote the section.

CASE NOTES

Cited: MacKool v. State, 2012 Ark. 287, — S.W.3d — (2012).

12-29-505. Duty to furnish information.

It shall be the duty of the sentencing judge, the county sheriff of the county, the Director of the Department of Correction or the Director of the Department of Community Correction, and the warden or administrative head of the penal facility or residential facility in which the person or prisoner is confined to furnish on inquiry to the Attorney General or prosecuting attorney all information and assistance possible to enable the Attorney General or prosecuting attorney to secure reimbursement for the cost of care of the person or prisoner by the State of Arkansas.

History. Acts 1981, No. 715, § 5; A.S.A. 1947, § 46-1705; 2013, No. 289, § 4.
Amendments. The 2013 amendment inserted "or the Director of the Department of Community Correction" and "or residential facility."

12-29-506. Duties of Attorney General — Assistance.

(a) The Attorney General shall enforce this subchapter.

(b) However, the Attorney General may refer to the prosecuting attorney of the county from which the inmate in the Department of Correction or the person residing in a Department of Community Correction facility was sentenced, or to the prosecuting attorney of the county in which any property or estate of any such inmate is located, to investigate or assist in legal proceedings to obtain the reimbursements for the cost of care of such prisoners, as authorized in this subchapter.

History. Acts 1981, No. 715, § 7; A.S.A. 1947, § 46-1707; 2013, No. 289, § 5.
Amendments. The 2013 amendment rewrote (a); and inserted "or the person residing in a Department of Community Correction facility" in (b).

12-29-507. Deposit of recovered moneys — Payment of costs.

(a)(1) All moneys recovered for the cost of care of prisoners in a facility of the Department of Correction or the Department of Community Correction under this subchapter shall be deposited into the State Treasury.

(2) The Treasurer of State shall credit the moneys to the appropriate fund established by law from which appropriations to the Department of Correction or the Department of Community Correction are made for inmate care and custody at the Department of Correction or the Department of Community Correction.

(b) However, the cost of making any investigation necessary to secure the reimbursements provided under this subchapter shall be paid from the reimbursement secured under this subchapter in those instances in which the General Assembly has not otherwise provided funds to defray the cost of the investigations.

History. Acts 1981, No. 715, § 6; A.S.A. 1947, § 46-1706; 2013, No. 289, § 6.
Amendments. The 2013 amendment inserted "or the Department of Community Correction" in (a)(1); and substituted "Department of Correction or the Depart-

ment of Community Correction" for "department" twice in (a)(2).

CASE NOTES

Illustrative Cases.

Because the sate was entitled to the $5016.61 in appellant's inmate account under the Arkansas State Prison Inmate Care and Custody Reimbursement Act, §§ 12-29-501 to 12-29-507 for a portion of the cost of housing appellant, the court ordered the deposit of that money into the state treasury in accordance with subdivision (a)(1) of this section. MacKool v. State, 2012 Ark. 287, — S.W.3d — (2012).

CHAPTER 30

STATE INMATE INDUSTRIES AND LABOR

SUBCHAPTER.

Subchapter 2 — Prison-Made Goods Act of 1967

SECTION.

12-30-203. Establishment of prison industries.

The Board of Corrections may purchase, in the manner provided by law, equipment, raw materials, and supplies and engage supervisory personnel necessary to establish and maintain for this state, at the Department of Correction or institution under control of the board, industries for the utilization of services of prisoners in the manufacture or production of articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported, in whole or in part, by this state and the political subdivisions of this state.

History. Acts 1967, No. 473, § 3; A.S.A. 1947, § 46-236; 2013, No. 1277, § 3.

Amendments. The 2013 amendment substituted "may purchase" for "is authorized to purchase"; deleted "to" preceding "engage" and "or any penal farm" following "Correction"; and substituted "the board" for "this board" and "subdivisions of this state" for "subdivisions thereof."

12-30-205. Purchase of goods by nonprofit organizations and other individuals.

(a) A nonprofit organization may purchase goods produced by the Department of Correction's Industry Division as provided for by this subchapter upon the condition that the goods may not be resold for profit.

(b)(1) Goods produced by the division as provided for by this subchapter, excluding furniture and seating, may also be purchased by:

(A) Current employees and retirees of the Department of Correction;

(B)(i) All employees of the public offices, departments, institutions, school districts, and agencies of this state.

(ii) Subdivision (b)(1)(B)(i) of this section shall not include members of the General Assembly; and

(C) Current and former members of the Board of Corrections.

(2) Goods purchased by an individual under subdivision (b)(1) of this section shall be for personal use only and not for resale.

History. Acts 1967, No. 473, § 4; 1985, No. 825, § 1; A.S.A. 1947, § 46-237; Acts 1999, No. 1375, § 1; 2005, No. 1182, § 1; 2009, No. 502, § 1; 2011, No. 779, § 24.

Amendments. The 2011 amendment, in (b)(1)(B)(i), inserted "public" preceding "offices" and deleted "public" preceding "agencies."

Subchapter 3 — Farms

SECTION.
12-30-308. Lease or rental of land.

12-30-308. Lease or rental of land.

(a) The Board of Corrections, in its discretion and with the Governor's approval, may cease or abandon the cultivation of any land now owned by the state and under the jurisdiction of the board and may rent or lease the land not cultivated, or abandoned and not needed in the proper operation of the penal system of this state, if they deem the action expedient.

(b) In its discretion and with the Governor's approval, the board may rent or lease additional lands for the planting and cultivation of crops by inmates.

History. Acts 1933, No. 30, § 33; Pope's Dig., § 12700; A.S.A. 1947, § 46-217; 2013, No. 294, § 1; 2013, No. 295, § 6; 2013, No. 1277, § 4.

Amendments. The 2013 amendment by No. 294 deleted (b)(2).

The 2013 amendment by No. 295 substituted "inmates" for "convicts" in (b)(1).

The 2013 amendment by No. 1277 deleted the (b)(1) designation; in the introductory language of (b), deleted "The board" from the beginning, inserted "the board" preceding "may rent," and substituted "inmates" for "convicts"; and deleted (b)(2).

Subchapter 4 — Work-Study Release

SECTION.
12-30-407. Housing of participants.

12-30-407. Housing of participants.

(a)(1)(A) The Board of Corrections may promulgate rules and regulations to allow the proper classification of inmates to be released to the county sheriffs of approved jail facilities or chiefs of police or other authorized law enforcement officers of city-operated approved jail facilities or community correction centers outside the Department of Correction.

(B)(i) Inmates shall be interviewed to develop a classification of each inmate's skills, work experiences, job background, and education.

(ii) Such inmates are to work at jobs that directly benefit those facilities or a political subdivision and that are related to a particular inmate's background classification and where they are to be under supervision at all times.

(2)(A)(i) County sheriffs, chiefs of police, or other authorized law enforcement officers of approved jail facilities may request assignment of inmates to their approved facilities to perform particular jobs for the facilities or for a political subdivision which are in a particular area of need of the facility or a political subdivision.

(ii) The Department of Correction shall review the requests and shall submit a list of inmates with appropriate skills or backgrounds for the particular job needs of the approved facility in accordance with the Department of Correction's classification of inmates' skills and backgrounds.

(iii) County sheriffs, chiefs of police, or other authorized law enforcement officers will choose inmates from the submitted list which are appropriate for the needs of their facilities or a political subdivision.

(B) County sheriffs, chiefs of police, or other authorized law enforcement officers shall not request the assignment of a particular inmate to their approved facility and may refuse the assignment of a particular inmate.

(3)(A) An inmate shall not be released to approved jail facilities until notification of the release is first sent to the county sheriff of the county from which the inmate was tried and convicted, the prosecuting attorney's office who convicted the inmate, and, upon a written request, to the victim or victim's family.

(B) Notification of the victim or victim's family shall be done by mail to the last known address supplied to the Department of Correction in accordance with Department of Correction policies.

(4)(A) Inmates so released shall be entitled to credit on their sentences under the meritorious classification system of the Department of Correction.

(B) However, no inmate shall be eligible to be released to the county sheriff, chief of police, or other authorized law enforcement officer of an approved jail facility unless the inmate is within thirty (30) months of his or her first parole eligibility date or his or her first post prison transfer eligibility date, unless:

(i) The inmate is returning to the county from which he or she was tried and convicted and the victim or victim's immediate family, if residing in the county from which the inmate was tried and convicted, has been notified of the inmate's return; or

(ii)*(a)* If the inmate is released to a county other than a county from which he or she was tried and convicted, the county sheriff of the county from which he or she was tried and convicted shall be notified as provided in subdivision (a)(3)(A) of this section.

(b)(1) Unless the county sheriff responds within fifteen (15) days of notification that he or she disapproves of the transfer, the inmate may be transferred as provided in this section.

(2) If the county sheriff disapproves of the transfer and an inmate becomes eligible to be released again, the notifications required by subdivision (a)(3) of this section shall be made again.

(b)(1) The number of persons on prerelease, work-release, and other rehabilitative programs that may be housed at the Arkansas Health Center shall not exceed a number appropriate to maintain the security and good order of the center.

(2) However, with the approval of the Department of Human Services State Institutional System Board and the Administrator of the Arkansas Health Center, a maximum number of persons on prerelease, work-release, and other rehabilitative programs to be housed at the center may be established by the Board of Corrections.

(c) Inmates released to the county sheriff of approved jail facilities or community correction centers pursuant to this section prior to July 28, 1995, shall remain eligible for release, notwithstanding the provisions of this section.

History. Acts 1968 (1st Ex. Sess.), No. 50, § 9; 1971, No. 465, § 1; 1977, No. 482, § 5; 1977, No. 948, § 20; 1981, No. 58, § 2; 1983, No. 309, §§ 1, 2; 1983, No. 440, § 1; 1983, No. 814, § 1; A.S.A. 1947, §§ 46-117, 46-117.2, 46-117.3; Acts 1991, No. 287, § 1; 1991, No. 1112, § 1; 1993, No. 532, § 8; 1993, No. 550, § 8; 1995, No. 1188, §§ 1, 2; 1997, No. 115, § 1; 1997, No. 936, § 1; 1997, No. 1271, § 1; 2001, No. 152, § 1; 2001, No. 1402, § 1; 2011, No. 183, § 1.

Amendments. The 2011 amendment, in (b)(1), substituted "prerelease, work-release, and other rehabilitative programs that" for "prerelease and work-release programs of the Department of Correction that" and "a number appropriate to maintain the security and good order of the center" for "two hundred twenty-five (225)"; in (b)(2), substituted "maximum number of persons on prerelease, work-release, and other rehabilitative programs to be" for "maximum of four hundred twenty-five (425) persons on prerelease and work-release programs may be" and added "may be established by the Board of Corrections" at the end.

CHAPTER 41

LOCAL CORRECTIONAL FACILITIES

SUBCHAPTER.

1. General Provisions.

SUBCHAPTER 1 — GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2013, No. 1207, § 33, provided: "LOCAL GOVERNMENT INMATE COST REPORT. Each calendar year, the Association of Arkansas Counties shall compile and submit a report to the Arkansas Legislative Council, of all costs incurred, excluding construction costs, by local government units housing inmates sentenced to the Department of Correction and Department of Community Correction. The cost report shall be a representative sample of all counties housing and caring for state inmates. The report shall be submitted no later than July 1 of the calendar year immediately following the reporting year.

"The Association of Arkansas Counties in coordination with Legislative Audit shall determine which counties will be included in the sample and shall include a sufficient number of counties from each classification based upon population and each congressional district to ensure a fair representation of costs incurred. Guidelines for preparing this cost report shall be developed by the Division of Legislative Audit in coordination with the Association of Arkansas Counties. The Division of Legislative Audit shall test the accuracy of the information submitted during the routine audit of the applicable county.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

12-41-106. Medicaid eligibility of an inmate in a local correctional facility.

(a) If an inmate in a local correctional facility receives medical services that meet criteria for Medicaid coverage, the local correctional facility may apply for Medicaid coverage under this subsection.

(b)(1) The inmate may designate a representative for the purposes of filing a Medicaid application and complying with Medicaid requirements for determining and maintaining eligibility.

(2) However, the local correctional facility having custody of the inmate shall be the authorized representative for purposes of establishing and maintaining Medicaid eligibility under this subsection if:

(A) The inmate does not designate a representative within three (3) business days after request; or

(B) The representative designated under subdivision (b)(1) of this section does not file a Medicaid application within three (3) business days after appointment and request.

(c) An authorized representative under this section:

(1) Shall have access to the information necessary to comply with Medicaid requirements; and

(2) May provide and receive information in connection with establishing and maintaining Medicaid eligibility, including confidential information.

(d)(1) The county sheriff or the keeper of the jail or his or her designee may access information necessary to determine if a Medicaid application has been filed on behalf of the inmate.

(2) Access under subdivision (d)(1) of this section shall be to:

(A) Establish Medicaid eligibility;

(B) Provide health care services; or

(C) Pay for health care services.

History. Acts 2013, No. 1117, § 1.

CHAPTER 42

LABOR OF COUNTY AND CITY PRISONERS

12-42-101. Definition.

As used in §§ 12-42-109, 12-42-110, 12-42-112, 12-42-113, and 12-42-115, "county inmates" means persons convicted of misdemeanors or petty offenses and committed to jail in default of the payment of the fine and costs adjudged against them.

History. Acts 1877, No. 73, § 14, p. 73; C. & M. Dig., § 2059; Pope's Dig., § 2661; A.S.A. 1947, § 46-519; 2013, No. 295, § 7.

Amendments. The 2013 amendment substituted " 'county inmates' " for " 'county convicts'. "

12-42-106. Contracts with other counties, cities, or towns — Liability.

(a)(1) The county court or the county judge thereof in vacation, or the mayor of any city or incorporated town, when authorized to do so by an ordinance duly adopted by the city or town council or other governing body of the municipality, is authorized and empowered to make a contract with any other county, city, or town for the maintenance, safekeeping, and working of inmates committed to county or city jails except inmates awaiting trial.

(2) The county court, county judge, or mayor may make such contract as deemed in the best interests of the county, city, or incorporated town.

(b) For the purpose of making a contract to effectuate the provisions of this section and §§ 12-42-102, 12-42-104, 12-42-105, and 12-42-107, the county court or county judge of any county, and the mayor, with the approval of the city or town council, or other governing body of any municipality, is vested with plenary power.

(c) Any county, city, or town contracting for the safekeeping of inmates under the provisions of this section and §§ 12-42-102, 12-42-

104, 12-42-105, and 12-42-107, shall obligate itself to furnish the inmates with good and wholesome food, comfortable clothing, and medicine when sick and shall not require them to work at unreasonable hours or for a longer time during any one (1) day than other laborers doing the same kind of labor are accustomed to do.

(d) A county sheriff, constable, mayor, or other officer to whom a person is committed for imprisonment to serve a sentence imposed for misdemeanor or petty offense or in default of the payment of fine and costs therefor shall not be responsible for the health, safety, or welfare of the person if the county sheriff, constable, mayor, or other officer shall deliver the person to any county, city, or town other than that of which the former is an officer, pursuant to a contract for the maintenance, safekeeping, and working of inmates authorized by statute.

History. Acts 1939, No. 118, §§ 3, 6; 1965, No. 371, § 2; A.S.A. 1947, §§ 46-504, 46-511, 46-511.1; 2013, No. 295, § 8.

Amendments. The 2013 amendment substituted "inmates" for "prisoners" throughout the section; substituted "inmates" for "convicts" in (c); and, in (d), substituted "A" for "No" at the beginning and inserted "not" preceding "be responsible."

12-42-109. Management of inmates not hired.

(a) Unless the inmates are immediately hired out, the management and control of the county inmates shall be confined to county courts either in term time or in vacation by the county judge.

(b) The county court or county judge shall always have the right to require the aid of the county sheriff and constables of their respective counties. All lawful orders or process necessary to be issued and executed shall be executed by the county sheriff or constable.

History. Acts 1877, No. 73, § 12, p. 73; C. & M. Dig., § 2057; Pope's Dig., § 2659; A.S.A. 1947, § 46-517; 2013, No. 295, § 9.

Amendments. The 2013 amendment substituted "inmates" for "convicts" in the section heading, and twice in (a).

12-42-110. Labor on public works restricted.

A county inmate shall not be allowed to work on any public work or improvement whenever there may be danger of his or her escape, nor shall he or she be compelled to labor at any kind of business or in any avocation that would tend to impair his or her health or strength.

History. Acts 1877, No. 73, § 10, p. 73; C. & M. Dig., § 2055; Pope's Dig., § 2657; A.S.A. 1947, § 46-516; 2013, No. 295, § 10.

Amendments. The 2013 amendment substituted "A county inmate shall not be" for "No county convict shall be."

12-42-113. Warrants for costs.

When inmates employed on public works or improvements or in public workhouses shall have paid the full amount of their fines and costs by their labor, then the county court shall issue a warrant in favor of each officer to whom costs may be due, for the amount of his or her

costs, on the county treasurer, and it shall be paid if there are sufficient funds in the county treasury.

History. Acts 1877, No. 73, § 9, p. 73; C. & M. Dig., § 2054; Pope's Dig., § 2656; A.S.A. 1947, § 46-515; 2013, No. 295, § 11.

Amendments. The 2013 amendment substituted "inmates" for "convicts."

12-42-115. Records of inmates.

(a) The county court shall cause a record of all its proceedings under §§ 12-42-101, 12-42-109, 12-42-110, 12-42-112, 12-42-113, and this section to be recorded in a well-bound book to be provided for that purpose. The record shall contain:

(1) A descriptive list of all persons known as county inmates;

(2) How the inmate has been or is employed;

(3) The name of the party or parties hiring the inmate;

(4) The time when and the price at which the inmate has been employed;

(5) The amount paid or allowed for the employed or hired inmate;

(6) The amount due by the inmate as fine and costs; and

(7) Such other information as may be necessary and required under the rules adopted by the court.

(b) It shall be the duty of the contractor or superintendent to keep a record in which shall be stated the name of the prisoner, his or her height, race, age, complexion, color of eyes and hair, time of commitment, and the punishment adjudged by the court or justice, as well as the number of days the inmate may be held to labor and a record of the days worked by the prisoner.

History. Acts 1877, No. 73, § 13, p. 73; 1881, No. 81, § 15, p. 148; 1883, No. 78, § 4, p. 125; C. & M. Dig., §§ 2058, 2090; Pope's Dig., §§ 2660, 2692; A.S.A. 1947, §§ 46-514; 46-518; 2013, No. 295, § 12.

Amendments. The 2013 amendment substituted "inmates" for "convicts" in the section heading; and substituted "inmate" for "convict" and "inmates" for "convicts" throughout the section.

CHAPTER 49

INTERSTATE COMPACTS

Subchapter 1 — Interstate Corrections Compact

12-49-101. Title.

RESEARCH REFERENCES

ALR. Construction and Application of Interstate Corrections Compact and Implementing State Laws — Equivalency of Conditions and Rights and Responsibilities of Parties. 56 A.L.R.6th 553.

12-49-102. Text of Interstate Corrections Compact.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Interstate Corrections Compact and Implementing State Laws — Jurisdictional Issues, Governing Law, and Validity and Applicability of Compact. 54 A.L.R.6th 1.

Construction and Application of Interstate Corrections Compact and Implementing State Laws — Equivalency of Conditions and Rights and Responsibilities of Parties. 56 A.L.R.6th 553.

12-49-103. Director's powers.

RESEARCH REFERENCES

ALR. Construction and Application of Interstate Corrections Compact and Implementing State Laws — Equivalency of Conditions and Rights and Responsibilities of Parties. 56 A.L.R.6th 553.